



City of NORFOLK

C: Dir., Department of Planning and Community Development

To the Honorable Council
City of Norfolk, Virginia

February 11, 2014

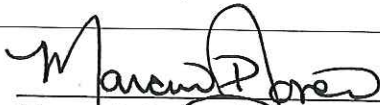
From: George M. Homewood, AICP CFM, Acting Planning Director

Subject: **Adult Use Special Exception for Waterside Live!**

Reviewed:  Ronald H. Williams, Jr., Assistant City Manager

Ward/Superward: 2/6

Approved:


Marcus D. Jones, City Manager

Item Number: R-15

- I. **Staff Recommendation:** Approval.
- II. **Commission Action:** By a vote of 6 to 0, the Planning Commission recommends **Approval**.
- III. **Request:** Special Exception to operate an Entertainment Establishment with Alcoholic Beverages
- IV. **Applicant:** Waterside Live! – 333 Waterside Drive
- V. **Description:** This request will allow the applicant to operate an entertainment complex with a variety of restaurants and venues that will provide alcoholic beverages and entertainment options within the redeveloped Waterside Festival Marketplace.
 - The three existing restaurants (Outback Steakhouse, Joe's Crab Shack, and Hooters) will still retain their valid Special Exception approvals and they will not be affected by the adoption of this Special Exception.

	Current	Proposed
Hours of Operation	10:00 a.m. until 2:00 a.m. Seven days a week	6:00 a.m. until 2:00 a.m. Seven days a week
Hours for the Sale of Alcohol and Entertainment	11:00 a.m. until 1:00 a.m. Seven days a week	6:00 a.m. until 2:00 a.m. Seven days a week
Entertainment	<ul style="list-style-type: none">• Live Instrumental/Vocal Performers• Magicians• Clowns• Jugglers• Cultural Dance	Unrestricted

Staff point of contact: Matthew Simons at 664-4750, matthew.simons@norfolk.gov
Attachment:

- Staff Report to CPC dated January 23, 2014 with attachments
- Letter of opposition – Downtown Norfolk Civic League
- Proponents and Opponents
- Ordinance



City of NORFOLK

To the City Planning Commission
City of Norfolk, Virginia

January 23, 2014

From: Matthew Simons, *M.S.*
City Planner II

Subject: Special Exception to operate
an Entertainment Establishment with
alcoholic beverages at 333 Waterside
Drive – Waterside Live!

Reviewed: Leonard M. Newcomb III, *L.M.N.*
Land Use Services Manager

Ward/Superward: 2/6

Approved: *G.M.H.*
George M. Homewood, AICP, CFM
Acting Planning Director

Item Number: 7

- I. **Recommendation:** Staff recommends approval, considering compliance with *Zoning Ordinance* requirements and consistency with approved plans.
- II. **Applicant:** Waterside Live! by Norfolk District Associates, LLC
333 Waterside Drive
- III. **Description:** The request will allow the applicant to operate an entertainment complex with a variety of restaurants and venues that will provide alcoholic beverages and entertainment options within the redeveloped Waterside Festival Marketplace.
- IV. **Analysis**
The site is located along the southern side of Waterside Drive along the Elizabeth River in Downtown Norfolk.

Plan Analysis

- The proposed Special Exception is consistent with *plaNorfolk2030*, which designates this site as Downtown.
- The Enhancing Economic Vitality chapter of *plaNorfolk2030* supports efforts to ensure the vitality of the waterfront, specifically encouraging expansion of its role as an economic catalyst.

Zoning Analysis

- The site is located within the D-1 (Downtown Waterfront) zoning district which permits the proposed use by Special Exception.

	Current	Proposed
Hours of Operation	10:00 a.m. until 2:00 a.m. Seven days a week	6:00 a.m. until 2:00 a.m. Seven days a week
Hours for the Sale of Alcohol and Entertainment	11:00 a.m. until 1:00 a.m. Seven days a week	6:00 a.m. until 2:00 a.m. Seven days a week
Entertainment	<ul style="list-style-type: none"> • Live Instrumental/Vocal Performers • Magicians • Clowns • Jugglers • Cultural Dance 	Unrestricted
Capacity	(Common areas only) <ul style="list-style-type: none"> • Seating: <ul style="list-style-type: none"> ○ 350 indoor ○ no seats outdoor ○ 5,250 total capacity 	To be determined under Virginia Uniform Statewide Building Code

- Special Exception history:

City Council Approvals (active)	Applicant	Changes
August 2009	Waterside Festival Marketplace	<ul style="list-style-type: none"> • Expanded Entertainment and ABC to Common Areas
August 2009	Outback Steakhouse	<ul style="list-style-type: none"> • Eating and Drinking
August 2009	Joe's Crab Shack	<ul style="list-style-type: none"> • Eating and Drinking
August 2009	Hooters	<ul style="list-style-type: none"> • Eating and Drinking
Pending	Waterside Live! by Norfolk District Associates, LLC	<ul style="list-style-type: none"> • Repeals Common Area Special Exception • Expands Entertainment Options • Expands hours for operation, alcohol sales and entertainment

Traffic Analysis

- The Institute of Transportation Engineers forecasts travel for restaurants based upon the total seating of an establishment.
 - Since the exact number of seats will not be determined until new restaurants are selected and their arrangements are secured, determination of any traffic forecast would be premature.
- There is not a minimum parking requirement for uses located downtown.
- The site has nearby light rail transit access from the Civic Plaza and MacArthur stations.
- The City has committed in the adopted cooperation agreement with the developer to provide 24-hour dedicated parking within the adjoining parking garage to the Waterside Live! development as follows:
 - Between the hours of 6:00 a.m. until 6:00 p.m., Monday through Friday, the City has dedicated 211 parking spaces.
 - Between the hours of 6:00 p.m. until 6:00 a.m., seven days a week, the City has dedicated 561 parking spaces.

V. Financial Impact

- The requests will facilitate the reuse and redevelopment of a site that is currently underutilized.
- The addition of new commercial activity on the site will generate additional tax revenue.
- The applicant is current on all real estate taxes.

VI. Environmental

- This site is located in a district that permits this use by Special Exception.
- The three existing restaurants (Outback Steakhouse, Joe's Crab Shack, and Hooters) will still retain their valid Special Exception approvals and they will not be affected by the adoption of this Special Exception.
- The changes proposed to this use should not have an adverse impact on the surrounding uses.

VII. Community Outreach/Notification

- Legal notice was posted on the property on December 17.
- Letters were sent to the Downtown Norfolk Civic League and Downtown Norfolk Council on January 6.
- Letters were mailed to all property owners within 300 feet of the property on January 8.
- Notice was sent to the civic leagues by the Department of Communications on January 8.
- Legal notification was placed in *The Virginian-Pilot* on January 9 and 16.

VIII. Coordination/Outreach

This report has been coordinated with the Department of Planning and Community Development and the City Attorney's Office.

Supporting Material from the Department of Planning and Community Development:

- Draft Ordinance
- Location Map
- Zoning Map
- 1000' Radii Map of Entertainment Establishments
- Letter to the Downtown Norfolk Civic League
- Letter to the Downtown Norfolk Council


Proponents and Opponents

Proponents

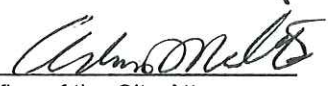
Michael Stoltz – Representative
601 East Pratt Street, 6th floor
Baltimore, MD 21202

Opponents

Kevin Murphy – DNCL, president
109-B College Place
Norfolk, VA 23510

Form and Correctness Approved: 

Contents Approved: 

By 
Office of the City Attorney

By 
DEPT.

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE GRANTING A SPECIAL EXCEPTION TO NORFOLK DISTRICT ASSOCIATES, LLC TO PERMIT THE OPERATION OF AN ENTERTAINMENT ESTABLISHMENT ON PROPERTY LOCATED AT 333 WATERSIDE DRIVE.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That a Special Exception is hereby granted to Norfolk District Associates, LLC ("NDA"), authorizing the operation of the property located at 333 Waterside Drive as an entertainment establishment. The property which is the subject of this Special Exception is more fully described as follows:

Property fronting 488 feet, more or less, along the southern line of Waterside Drive; premises numbered 333 Waterside Drive and known as "The Waterside" and the adjoining property leased or permitted to be used ("Facility") under the attached Deed of Lease and Development Agreement dated October 31, 2013 between Norfolk Development and Housing Authority and NDA ("Lease").

Section 2:- That the Special Exception granted hereby shall be subject to the following conditions:

- (a) The sale of alcoholic beverages and the provision of entertainment may only be conducted from 6:00 a.m. until 2:00 a.m. the following morning, seven days per week.
- (b) The occupancy of the Common Areas (as such term is defined in the Lease) or any of the individual tenant spaces within the Facility shall not exceed the maximum number of people indicated on the applicable certificates of occupancy as posted on the wall in each such space, and the use authorized by this Special Exception shall not commence until a certificate of occupancy reflecting the limit in each space has been issued by the Department of Planning.

- (c) The entertainment provided shall not include lewd, obscene, erotic or other forms of dance which violate § 5-27, § 28-11 or § 28-12 of the Norfolk City Code (1979), as amended, concerning public nudity and indecent exposure. Forms of entertainment which do not violate applicable laws or the terms of the Lease, as amended from time to time, are authorized by this Special Exception.
- (d) NDA shall maintain a current, active business license, if required by law, at all times while in operation.
- (e) NDA shall remain current on all food and beverage taxes and business personal property taxes, if required by law, at all times while in operation.
- (f) This Special Exception may be revoked if all of the licenses to serve alcoholic beverages held by NDA and those held by any parent, subsidiary or affiliate of NDA in connection with the use of the Facility are revoked by a final unappealable decision of the Alcoholic Beverage Control ("ABC") Commission of the Commonwealth of Virginia or any court of competent jurisdiction.
- (g) In-house or licensed security shall be provided at all times when any entertainment event is being held on the property.
- (h) This Special Exception shall apply to the Common Areas of the Facility, plus such other areas as are controlled by NDA or any parent, subsidiary or affiliate of NDA. Moreover, this Special Exception will cover portions of the Facility leased to unrelated third parties, unless and until a separate special exception is issued by City Council to such unrelated third party for the use of such party's individual tenant space.

Section 3:- That the City Council hereby determines that the Special Exception granted herein and the uses authorized hereby in connection with the operation of the Facility as described herein and pursuant to the terms of the Lease comply with each of the requirements of §25-7 of the Zoning Ordinance of the City of Norfolk, 1992 (as amended), namely that:

- (a) The proposed use and development will be in harmony with the objectives and policies of the adopted General Plan of Norfolk and with the general and specific purposes

for which this ordinance was enacted and for which the regulation of the district in question were established;

- (b) The proposed use and development will not substantially diminish or impair the value of the property within the neighborhood in which it is located;
- (c) The proposed use and development will not have an adverse effect upon the character of the area or the public health, safety and general welfare. Conditions have been applied to the proposed use and development, as specified in Section 25-8 below, which mitigate potential adverse impacts;
- (d) The proposed use and development will be constructed, arranged and operated so as not to interfere with the use and development of neighboring property in accordance with the applicable district regulations;
- (e) The proposed use and development will be served adequately by essential public facilities and services such as streets, public utilities, drainage structures, police and fire protection, refuse disposal, parks, libraries, and schools;
- (f) The proposed use and development will not cause undue traffic congestion nor draw significant amounts of traffic through residential streets;
- (g) The proposed use and development will not result in the destruction, loss or damage of natural, scenic or historic features of significant importance;
- (h) The proposed use and development will not cause substantial air, water, soil or noise pollution or other types of pollution which cannot be mitigated;
- (i) The proposed use and development will not cause a negative cumulative effect, when its effect is considered in conjunction with the cumulative effect of various special exception uses of all types on the immediate neighborhood and the effect of the proposed type of special exception use on the City as a whole;
- (j) The proposed use and development complies with all additional standards imposed on it by the particular provisions of the ordinance authorizing such use; and

- (k) No application for a special exception shall be recommended or granted until any and all delinquent real estate taxes owed to the City of Norfolk on the subject property have been paid.

Section 4:- That the Special Exception granted hereby replaces the previously granted special exception permitting the operation of an Entertainment Establishment on this property, adopted on August 18, 2009 (Ordinance No. 43,554) and all provisions and conditions previously approved are entirely superseded by the terms of this Special Exception. This Special Exception does not affect any of the other special exceptions previously granted in connection with the use of this property, which were also adopted on August 18, 2009 (Ordinance Nos. 43,553, 43,556 & 43,557).

Section 5:- That the general conditions to be applied to all similar special exceptions pursuant to §25-9 of the Zoning Ordinance of the City of Norfolk, 1992 (as amended), are specifically waived or modified by the approval of this Special Exception with regard to this Facility to the extent the terms and conditions of this Special Exception conflict with any such general conditions.

Section 6:- That this ordinance shall be in effect from the date of its adoption.

ATTACHMENT:

Deed of Lease and Development Agreement (143 pages)

DEED OF LEASE AND DEVELOPMENT AGREEMENT

Between

NORFOLK REDEVELOPMENT AND HOUSING AUTHORITY

As Lessor

and

NORFOLK DISTRICT ASSOCIATES, LLC

As Lessee

October 31, 2013

Deed of Lease and Development Agreement Table of Contents

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2. Lease
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4. Plan of Development
5. Improvements/Licenses/Tenant Allowance in the form of Performance Based Grant
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7. Impositions
8. Marina Support Space
9. Maintenance, Use, and Alteration
10. Exclusive/Non-Competition Provision
11. Insurance
12. Damage or Destruction
13. Condemnation
14. Assignments
15. Non-disturbance and Attornment
16. Rights of Leasehold Mortgagee
17. Defaults/Arbitration
18. Representations
19. Miscellaneous Provisions

Exhibits

- Exhibit "A"** – Legal Description of the Leased Premises
- Exhibit "B"** – Plat showing the Leased Premises
- Exhibit "C"** – Encumbrances
- Exhibit "D"** – Permitted Exceptions
- Exhibit "E"** – Lessor's Work
- Exhibit "F"** – Lessee's Work
- Exhibit "G"** – Form of Subtenant Estoppel
- Exhibit "H"** – Form of Subtenant SNDA
- Exhibit "I"** – Project Plan
- Exhibit "J"** – Marina Support Space Form Sublease
- Exhibit "K"** – Pedestrian Promenade
- Exhibit "L"** – Waterside Marina
- Exhibit "M"** – Performance Based Grant & Memorandum of Agreement
- Exhibit "N"** – Management Offices
- Exhibit "O"** – Litigation
- Exhibit "P"** – Violations of Law
- Exhibit "Q"** – Notices
- Exhibit "S"** – Leases and Other Occupancy Agreements
- Exhibit "T"** - Parking Agreement
- Exhibit "U"** – Guaranty of Completion
- Exhibit "V"** - Exclusive Area (Hampton Roads)
- Exhibit "W-1"** – Vendor Prohibited Area
- Exhibit "W-2"** – Special Events Vendor Prohibited Area
- Exhibit "X"** – Special Exception
- Exhibit "Y"** – Form of Legal Opinion

DEED OF LEASE AND DEVELOPMENT AGREEMENT

THIS DEED OF LEASE AND DEVELOPMENT AGREEMENT, made and entered into this 31st day of October 2013, by and between **NORFOLK REDEVELOPMENT AND HOUSING AUTHORITY**, a political subdivision of the Commonwealth of Virginia, as Lessor, and **NORFOLK DISTRICT ASSOCIATES, LLC**, a limited liability company organized and existing under the laws of the State of Maryland, as Lessee;

W I T N E S S E T H, That:

WHEREAS, Lessor owns the Leased Premises and desires to lease the Leased Premises to Lessee, and Lessee desires to lease the Leased Premises from Lessor, such leasing to be in accordance with the terms, conditions and provisions of this Lease Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration in hand paid by each Party hereto to the other at and before the sealing and delivery of these presents, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee, intending to be legally bound, do hereby covenant and agree as follows:

1. **Definitions.** For purposes of this Lease Agreement, and in addition to terms defined elsewhere in this Lease Agreement, the following defined terms shall have the meanings ascribed thereto in this Section.

"Affiliate" means any Entity that directly or indirectly shares at least fifty-one percent (51%) common ownership with another Entity, or any person that directly or indirectly owns at least fifty-one percent (51%) of the ownership interests of another Entity, or an Entity in which fifty-one percent (51%) of the ownership interests are owned directly or indirectly by another person.

"Base Rent" shall have the meaning set forth in Section 6.2.1.

"Building Permit" means the permit needed to initially construct the Improvements issued by the Division of Building Construction Services of the Department of Planning and Community Development of the City of Norfolk, Virginia.

"Business Day" means a day other than a Saturday, Sunday, or legal holiday in the Commonwealth of Virginia.

"Certificate of Completion" means a written statement, addressed to Lessor, from an architect or architectural firm engaged by Lessee stating that the Construction has been substantially completed (exclusive of punchlist items and landscaping).

"City" means the City of Norfolk, Virginia.

"Common Area" shall mean any area or space of the Leased Premises that is not subleased or intended to be subleased by the Lessee, whether indoors or outdoors. Lessee shall have the right, from time to time, to expand, reduce and/or modify the Common Area, provided, however that any physical alterations to the Common Area shall be made in accordance with the provisions of this Lease Agreement.

"Construction" shall mean the initial construction of the Improvements. The term "Construction" shall not include any actual or planned renovation rehabilitation, modification, construction or installation of improvements to portions of the Project that Lessee has leased and/or licensed and/or intends to lease and/or license to Subtenants, regardless of who undertakes such improvements (including the installation of a Subtenant's property thereon).

"Contracts" shall mean any agreement, written or oral, affecting, concerning or encumbering the Leased Premises with a term of over seven (7) days in length or a value or liability in excess of \$10,000.00 (including, but not limited to Leases.) It is expressly agreed that all agreements concerning any of the Existing Subtenants (regardless of consideration or length of term) are considered Contracts.

"Default Rate" shall mean the so-called "prime rate" of interest as published in the Wall Street Journal (or any similar successor publication if the Wall Street Journal ceases to publish) from time to time, plus five (5) percentage points.

"Delivery of Possession" is defined in Section 3.3 of this Lease Agreement.

"Delivery of Possession Date" means the date that Delivery of Possession occurs in accordance with Section 3.3 of this Lease Agreement.

"Development" shall mean the preparation of all Plans and any and all Construction. The term "Development" shall not include any plans or construction associated with any actual or planned renovation, rehabilitation, modification or installation of improvements to portions of the Project that Lessee has leased and/or licensed and/or intends to lease and/or license to Subtenants, regardless of who undertakes such improvements (including the installation of a Subtenant's property thereon). In addition, "Development" shall not include any renovation, rehabilitation, modification, construction or installation made to the Leased Premises after the issuance of the Certificate of Completion.

"Disposition" shall mean a sale, lease, assignment, or other transaction by which all or a part of a party's interest in the Leased Premises is passed on to another entity or person; such term shall include a Transfer insofar as it relates to Lessee or any assignee of Lessee, but shall not include the type of transaction that is described in the second paragraph of the definition of "Transfer" and shall not include Subleases or Leasehold Mortgages.

"Effective Date" means the date first written above.

"Encumbrances" means those matters, other than Impositions or Permitted Exceptions neither delinquent nor in default, affecting title to the Leased Premises as of the date of this Lease Agreement and more particularly described in Exhibit "C" attached hereto and by reference made a part hereof. The term "Encumbrances" include Contracts.

"Entity" means any person, corporation, limited liability company, partnership (general or limited), limited liability partnership, joint venture, association, joint stock company, trust or other business entity or organization.

"Event of Default" means any of those events, occurrences and circumstances so designated in Section 17.

"Existing Subtenants" means the existing leases, including all amendments and modifications to each such lease, for the businesses operated at the Leased Premises under the trade names Hooters and Outback Steakhouse. Additionally, Joe's Crab Shack may be an Existing Subtenant if they are not a month-to-month tenant. Lessor does not make representations regarding whether Joe's Crab Shack is an existing Subtenant (not month to month) and Lessee assumes the responsibility and liability, if any, arising from whether Joe's Crab Shack is an existing Subtenant.

"Expire", "Expired" or "Expiration" mean the expiration of the Term of this Lease Agreement by reason of lapse of time, and not by reason of any Event of Default.

"Government Approvals" means all licenses, permits, approvals, consents or other relief required of or deemed necessary or appropriate in Lessee's sole discretion for its use of the Leased Premises for the Permitted Use (as such term is defined herein) and including, without limitation, applications for zoning ordinance amendments, text amendments, subdivision approvals, zoning variances, special exceptions, use permits, consents, alcoholic beverage control licenses, inspections and construction permits from any and all governmental and quasi-governmental authorities having jurisdiction over the Leased Premises or the Permitted Use.

"Impositions" means all taxes, public and private assessments, use and occupancy taxes, transit taxes, water and sewer charges, rates and rents, charges for public utilities, excises, levies, license and permit fees and other charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, which shall or may during the Term be assessed, levied, charged, confirmed or imposed upon or accrue or become due or payable out of or on account of or become a lien on the Leased Premises or any part thereof, the appurtenances thereto or the sidewalks, streets or vaults adjacent thereto, or the rent and income [that is, rents received by or for the account of Lessee (or prior to the Delivery of Possession Date, Lessor) from any Subtenants or for any use or occupation of the Leased Premises, or any

part thereof, and such franchises, licenses and permits as may be appurtenant to the use of the Improvements, or any part thereof, or any documents to which Lessee is a party (which documents create or transfer any interest or estate in the Leased Premises, or any part thereof, payable to any governmental body) or Lessor is a party prior to the Delivery of Possession Date]. Impositions shall not include any income taxes, capital levy, estate, succession, inheritance or transfer taxes or similar tax of Lessor, or any franchise taxes imposed upon any owner of the fee of the Leased Premises or any income, profits or revenue tax, assessment or charge imposed upon the rent or other benefit received by Lessor under this Lease Agreement, by any municipality, county or state, the United States of America or any governmental body; provided, however, that if at any time during the Term, the present method of taxation or assessment shall be so changed that the whole or any part of the taxes, assessments, levies, impositions or charges now levied, assessed or imposed on real estate and the improvements thereon shall be discontinued and as a substitute therefor, taxes, assessments, levies, impositions or charges shall be levied, assessed and/or imposed wholly or partially as a capital levy or otherwise on the rental received from said real estate or the rents reserved herein or any part thereof, then such substitute taxes, assessments, levies, impositions or charges, to the extent so levied, assessed or imposed, shall be deemed to be included within the term "Impositions" to the extent that such substitute tax would be payable if the Leased Premises were the only property of Lessor subject to such tax.

"Improvements" means the improvements to be made to Waterside and to the Leased Premises by or for Lessee as part of the Development and as depicted on the Project Plan. The term "Improvements" shall not include any actual or planned renovation rehabilitation, modification, construction or installation of improvements to portions of the Project that Lessee has leased and/or licensed and/or intends to /or license to one or more Subtenants, regardless of who undertakes lease and such improvements (including the installation of a Subtenant's property thereon).

"Land Records" means the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia.

"Lease Agreement" means this Deed of Lease and Development Agreement, including all exhibits attached hereto, together with any amendments, modifications, supplements, restatements or replacements thereof.

"Lease Year" means each successive twelve (12) month period beginning on the first day of the first full calendar month following the Rent Commencement Date and ending at midnight on the last day of each such twelve (12) month period.

"Leased Premises" shall mean all of that certain land located in the City of Norfolk, Virginia and described by legal description on Exhibit "A" attached hereto and depicted on the plat attached hereto as Exhibit "B". The Leased Premises includes all improvements now existing or hereinafter constructed on the Leased Premises, including, but not limited to

Waterside and the Improvements, as same may be constructed, modified, renovated or demolished from time to time.

"Leasehold Mortgage" means any deed of trust, mortgage, security agreement or other instrument in the nature thereof at any time and from time to time constituting a lien upon the leasehold estate of Lessee created hereby, but not upon the reversionary fee estate of Lessor in the Leased Premises.

"Leasehold Mortgagee" means the holder or, collectively, the holders of the note(s) or other obligations secured by a Leasehold Mortgage.

"Lessee" means Norfolk District Associates, LLC, a limited liability company organized and existing under the laws of the State of Maryland, as the lessee under this Lease Agreement, and the successors and assigns thereof permitted under the terms of this Lease Agreement.

"Lessee Related Parties" means any Entity under common control as the Lessee or any Entity owned or operated by Affiliates of the Lessee. Lessee Related Parties shall not include Subtenants.

"Lessee's Work" means the work shown on Exhibit "F".

"Lessor" means Norfolk Redevelopment and Housing Authority, a political subdivision of the Commonwealth of Virginia, as the lessor under this Lease Agreement, and the successors, successors-in-title and assigns thereof.

"Lessor's Work" means the work shown on Exhibit "E".

"Notice" means a written advice or notification required or permitted by this Lease Agreement, as more particularly provided in Section 19.4.

"NRHA" means the Norfolk Redevelopment and Housing Authority.

"Pedestrian Footbridge" means that certain pedestrian access route from the second level of the Waterside garage to the second level of Waterside.

"Pedestrian Promenade" means that area shown on Exhibit "K".

"Performance Based Grant Agreement" means the Performance Based Grant & Memorandum of Agreement in the form attached as Exhibit "N". Lessee shall be a third party beneficiary of the Performance Based Grant Agreement.

"Permitted Exceptions" means the exceptions to title as shown on Exhibit "D".

"Permitted Use" means the use of the Leased Premises for one or more nightclubs, bars, restaurants, food courts, retail stores and/or entertainment venues similar to one or more of the Urban Properties, together with related and ancillary and/or complementary uses, such as a management and leasing office.

"Plans" means the plans as defined in Section 5.1.

"Project" means a real estate development to be located on and at the Leased Premises at least equal in quality to the Urban Properties, taking into account that the Development consists of a renovation and retrofit of an existing structure (i.e., Waterside), into an entertainment, retail, nightclub, bar and/or restaurant complex for the Permitted Use that is similar in quality to the Urban Properties.

"Qualified Assignee" means an Entity or an Entity with an Affiliate or a group of Affiliates meeting all of the following conditions: (a) at least seven (7) years experience in owning or managing 1st class retail projects which are similar in size or larger than the Project; (b) owns or manages 1st class retail, dining, restaurant, entertainment and/or mixed/use projects having in the aggregate a minimum of 1 million square feet of space (exclusive of the Project); (c) the controlling principals of which, if a privately held Entity, have not been convicted of a felony and (d) has a net worth in excess of Ten Million and 00/100 Dollars (\$10,000,000), which fact may be established by a letter from an independent accountant that is addressed to the Lessor. If the foregoing net worth standard has been satisfied by aggregating the net worth of one or more Affiliates of the Qualified Assignee, then in order for the proposed Assignee to constitute a Qualified Assignee, each such Affiliate shall be required to guarantee the obligations of such Assignee, as Lessee under this Lease, by guaranty of Lease reasonably satisfactory to Lessor.

"Rent" means the sums to be paid by Lessee to Lessor pursuant to the provisions of Section 6.

"Rent Commencement Date" means the date of the Reopening of the Leased Premises.

"Reopening of the Leased Premises" means the date on which Lessee has an advertised grand opening (or grand reopening) of the Leased Premises after it has performed the Lessee's Work.

"Sublease" means, generally, any one of the Subleases.

"Subleases" means all written or oral leases, rental agreements, licenses, concessions, easements, occupancies or other agreements or arrangements for use or hire of, or in respect to, any portion of the Project, between Lessee and occupants of portions of the Project.

"Substantial Completion" means the issuance of the Certificate of Completion.

"Subtenant" means any Entity which is or may hereafter be the sublessee or subtenant under any Sublease, and the occupant of a portion of the Project. A Subtenant may be an Affiliate of Lessee.

"Term" means the term of this Lease Agreement described in Section 3.1.

"Terminate", "Terminated" and "Termination" mean the termination of the Term of this Lease by reason of an Event of Default, and not by reason of the end of the Term.

"Transfer" shall mean a transfer involving or resulting in a significant change in the ownership or control of Lessee. A "significant change in the ownership or control of Lessee" is defined as a transaction resulting in (a) David Cordish, Jonathan Cordish, Blake Cordish, Reed Cordish, Joseph Weinberg and/or Charles F. Jacobs, (b) a trust created by any of them for the benefit of himself and/or his family and/or (c) an Entity in which David Cordish, Jonathan Cordish, Blake Cordish, Reed Cordish, Joseph S. Weinberg and/or Charles F. Jacobs is the president, a general partner, manager or managing member or the direct or indirect owner of at least fifty-one percent (51%) of the capital stock, partnership interest or membership interest and which Entity owns less than fifty percent (50%) of partnership or membership interests or of the issued and outstanding capital stock or membership interest of the Lessee. Such interest is hereafter sometimes referred to as the "Cordish Interest".

Notwithstanding anything in the foregoing to the contrary, a Transfer shall not be deemed to occur in the event that a significant change in the ownership or control of Lessee occurs, but such occurrence was the result of (a) the admission of members into Lessee for the purpose of providing capital for the Project as long as the Cordish Interest equals at least a twenty-five (25%) percent membership interest in Lessee, or (b) the death of David S. Cordish, Jonathan Cordish, Blake Cordish, Reed Cordish, Joseph Weinberg and/or Charles F. Jacobs. An Entity shall be deemed to be directly or indirectly controlled by a Person notwithstanding that the consent of other equity owners of such Entity may be required in order for Lessee or such Entity to take certain extraordinary actions (such as approval of Subleases, financing, budgets, and sales). The transactions described in this paragraph are permitted without the need to request or obtain the consent of Lessor.

"Urban Properties" mean the Live! branded properties that affiliates of the Lessee currently operate and maintain located in the States of Maryland, Pennsylvania, Missouri, and Texas and the Commonwealth of Kentucky, as same may evolve.

"Waterside" means the Waterside Festival Marketplace in its current state as of the Effective Date.

“Zoning Administrator” means the staff person designated by the Director of the Department of City Planning and Codes Administration, who is responsible for administering and enforcing the Zoning Ordinance (as such term is defined herein).

“Zoning Ordinance” means the Zoning Ordinance of the City of Norfolk, 1992.

2. **General Terms of Conveyance; Grant of Easements; Quiet Enjoyment; Right of First Refusal.**

2.1 **Lease.** Lessor, in consideration of and subject to the rents, covenants, agreements and conditions herein set forth, which Lessee hereby agrees shall be paid, kept and performed by Lessee, does hereby lease, let, demise and rent to Lessee, and Lessee does hereby rent and lease from Lessor, all right, title and interest of Lessor in and to the Leased Premises.

TO HAVE AND TO HOLD the Leased Premises and all rights, privileges and appurtenances thereunto appertaining unto Lessee, for and during the Term, unless sooner Terminated in accordance with any of the provisions of the Lease, subject to the Permitted Exceptions and Impositions neither delinquent nor in default.

2.2 **Easements.** On and after the Effective Date and throughout the Term, within thirty (30) days after receipt of written request from Lessee, time being of the essence, Lessor, when its execution is required, shall execute and join in any grants or easements for electric, telephone, gas, water, sewer, and other public utilities and facilities, or other facilities useful and/or necessary to the construction, alteration, operation, or maintenance of all or any part of the Project and any other easements or grants, such as reciprocal easement and operating agreements, that Lessee deems necessary for the leasing, construction and/or operation of the Project, which are not inconsistent with the terms of this Lease Agreement. In the event Lessor's execution by reason of its obligation under this Section financially obligates Lessor, Lessee shall pay all such obligations. Except to the extent arising out of the negligence or breach of this Lease Agreement by Lessor or the City of Norfolk, Lessee shall indemnify and hold Lessor harmless from liability arising from agreements under this Section.

2.3 **Quiet Enjoyment.** Lessor covenants and agrees that Lessee, while paying the Rent and other sums payable under this Lease Agreement and performing its other covenants and agreements herein set forth, shall peaceably and quietly have, hold and enjoy the Leased Premises for the full Term, including for use as the Permitted Use, without hindrance or molestation from Lessor or any other Entity claiming by, through or under Lessor, subject to the terms, conditions and provisions of this Lease Agreement, and to the Permitted Exceptions.

2.4 **Conditions of Leasehold Title.** The lease of the Leased Premises to Lessee, effective as of the Delivery of Possession Date, shall convey good and marketable leasehold title to the Leased Premises, insurable by an A.L.T.A. approved title company that

would issue a leasehold owner and/or mortgagee title insurance policy at customary rates, free and clear of all liens, encumbrances, restrictions, covenants, and defects in title, but subject, however to:

- (a) the restrictions covenants, conditions, terms and provisions of this Lease Agreement; and
- (b) The Permitted Exceptions.
- (c) Subject to any issues in the Tenant Estoppel Certificates, which shall be the Lessor's responsibility to remedy, the leases to Outback Steakhouse, Hooters and Joe's Crab Shack will be assigned to Lessee and Lessee shall assume Lessor's obligations thereunder which arise after the assignment.

2.4.1 **Title Insurance Policies.** Lessee shall purchase a Lessee's and Lessor's title insurance policy at Lessee's cost.

2.5 **Right of First Refusal.** From and after the Effective Date Lessee shall have the right of first refusal for the purchase of the Leased Premises. In the event Lessor receives a bona fide written offer to purchase the Leased Premises from and after the Effective Date and during the Term, Lessor shall send written notice to Lessee of such offer (with a copy of the offer attached). "Bona fide" means an offer acceptable to Lessor in Lessor's sole discretion from an unrelated third party, specifically excluding the City or any entity with the City has an ownership interest and that the City directly or indirectly controls. Lessee shall then have thirty (30) days from the date it receives such notice to match the offer on its exact terms and conditions. In the event that Lessee does not match the offer within such thirty (30) day period, then for a period of one hundred eighty (180) days (measured from the date Lessee notifies Lessor it will not match the offer or from the end of the first thirty (30) day period referred to above) Lessor may proceed with the sale of the Leased Premises, subject to the terms and provisions of this Lease Agreement, to the offeror on the same terms and conditions contained within the offer. Should sale of the Leased Premises to the offeror not take place within the one hundred eighty (180) day period, Lessee's right of first refusal shall be deemed revived and Lessor must again comply with the provisions of this Section 2.5 before selling the Leased Premises.

2.6 **Visibility and Access.** Lessor acknowledges the importance of visibility of the Project from Towne Point Park and the downtown areas of the City of Norfolk. Lessor and the City of Norfolk will use its respective reasonable efforts to ensure that the planning and future development of Lessor and/or City of Norfolk controlled land in the surrounding area will take into account the visibility of the Project and ease of pedestrian and vehicular access thereto. The City of Norfolk will not, without first obtaining Lessee's consent, materially modify the location of the Pedestrian Footbridge or the Pedestrian Promenade, nor shall Lessor or the City of Norfolk unreasonably block access to the Pedestrian Footbridge or the Pedestrian Promenade.

From and after the Effective Date, the City of Norfolk shall maintain the Pedestrian Footbridge in good condition and repair.

2.7 **Expansion of Project:** At the request of Lessee, NRHA and Lessee may enter into an agreement for the development of a multistory tower above the Leased Premises if terms which are reasonably satisfactory to NRHA and Lessee can be agreed upon. NRHA is aware that zoning downtown permits multistory apartments and that the City is experiencing a boom in apartment development downtown.

3. **Term of Lease**

3.1 **Term.** This Lease Agreement is and shall remain in full force and effect from and after the date on which this Lease Agreement is fully executed and delivered by Lessor and Lessee. The term of this Lease Agreement shall be for a period of fifty (50) years, commencing on the Rent Commencement Date of this Lease Agreement and terminating at midnight on the date immediately preceding the fiftieth (50th) anniversary of the Rent Commencement Date unless extended pursuant to Section 3.2 hereof. This fifty (50) year period will be referred to herein as the "Initial Term", and "Term" shall refer to the Initial Term and any extension periods exercised pursuant to Section 3.2.

3.2 **Extension Terms.** Provided no Event of Default of Lessee exists, then Lessee shall have the option to extend the Term of this Lease Agreement for two (2) additional period(s) of fifteen (15) Lease Years each, commencing on the first day following the last day of the Initial Term of this Lease Agreement, or on the first day following the last day of the first (1st) extension period, as applicable, on the same terms and conditions as contained in this Lease Agreement. Lessee's option to extend the Term of this Lease Agreement, as above provided, shall be subject to the conditions precedent that (i) Lessee shall give Lessor written notice of Lessee's exercise of the above option(s) to extend no earlier than five (5) years prior to the end of the Initial Term, or five (5) years prior to the end of the first (1st) extension period, and no later than twelve (12) months prior to the expiration of the Initial Term, or the first (1st) extension period. Notwithstanding the previous sentence, for good cause such as a Subtenant or potential Subtenant requiring more term on its Sublease or proposed Sublease, Lessee may exercise any such option(s) to extend earlier than five (5) years prior to the end of the Initial Term (as same may have been previously extended), provided, however, in no event without the consent of Lessor, may Lessee exercise the first (1st) option prior to the thirty fifth (35th) Lease Year or the second (2nd) option prior to the fifty-fifth (55th) Lease Year. Following the expiration of the second (2nd) extension period, Lessee shall have no further right to renew or extend the Lease pursuant to this Section 3.2. Notwithstanding the above, unless consented to by Lessor, which consent shall not be unreasonably withheld, Lessee shall have no right to provide Lessor with a written notice of Lessee's exercise of an option to extend the Term during any time when less than seventy percent (70%) of the then current leasable area of the Project (exclusive of common areas) is leased.

3.3 **Delivery of Possession.** Lessor shall deliver possession of the Leased Premises to Lessee on a date and time selected by Lessee after the Lessor's Work has been completed to the satisfaction of Lessee ("Delivery of Possession"), but in no event shall Delivery of Possession occur within one hundred eighty (180) days or longer than three hundred sixty five (365) days from the Effective Date without the express written consent of Lessee, exercisable in its sole and absolute discretion. Lessor shall cause the Lessor's Work to be undertaken and completed to the satisfaction of Lessee within one hundred eighty (180) days of the Effective Date. Lessor shall keep Lessee reasonably informed of its progress in undertaking and completing the Lessor's Work. Within thirty (30) days after the Delivery of Possession Date, Lessor, at Lessee's request, shall execute an acknowledgement of the occurrence of the Delivery of Possession Date, which acknowledgement shall be in recordable form. Lessee may record such acknowledgement in the Land Records at its costs.

3.4 **Performance and Completion Guaranty.** On or prior to the Delivery of Possession Date, Lessee shall induce The Cordish Companies to execute and deliver to Lessor a guaranty of completion in the form attached hereto as **Exhibit "U"**.

4. Plan of Development

4.1 **Project Plan.** The Project Plan set forth on **Exhibit "I-1"** establishes the general plan pursuant to which the initial development of the Project by Lessee shall occur in accordance with and subject to the terms of this Lease Agreement.

4.2 Conduct of Business Pending Delivery of Possession.

- (a) Prior to the Delivery of Possession Date, Lessor will not (i) engage in any practice, take any action, or enter into any transaction outside the ordinary course of business with respect to its operations of Waterside and the Leased Premises without the prior written consent of Lessee, which consent shall not be unreasonably withheld, conditioned or delayed, (ii) enter into any lease of any portion of the Leased Premises without the prior written consent of Lessee, which consent may be withheld in Lessee's sole discretion, or (iii) enter into any Contract without the consent of Lessee, which consent shall not be unreasonably withheld so long as the term of such Contract will expire prior to Delivery of Possession.
- (b) Prior to Delivery of Possession, Lessee shall have the right for no consideration to use and to perform work, at its costs, on the existing landlord offices and related areas shown outlined on **Exhibit "N"** (the "Management Offices"). The work will be done in a good and workmanlike manner and Lessor will cooperate with Lessee on the building out and utilization of the Management Offices.

5. Improvements/Licenses/Tenant Allowance in the form of Performance Based Grant.

5.1 **Construction of the Improvements.** Lessee shall construct the Improvements in accordance with the terms and provisions below:

5.1.1 **Schematic Plans and Substantial Completion.**

5.1.1.1 Lessor acknowledges that Lessee, prior to beginning its preparation of design development drawings and outline specifications relating to all Improvements to the exterior of Waterside, has conferred with Lessor prior to the date of this Lease Agreement on the functional and aesthetic aspects thereof and agreement on the Project Plan. Lessee shall submit, as soon as reasonably practicable (given Lessee's schedule, the Anticipated Project Opening Date, and other factors) but in any event within six (6) months of the Effective Date, schematic plans that expand upon the Project Plan (the "Schematic Plans") relating to all Improvements to the exteriors of Waterside for approval by Lessor, which approval shall not be unreasonably withheld, conditioned or delayed and which approval shall be granted in the event that the Schematic Plans materially conform to the Project Plan. The Schematic Plans shall, in any event, be deemed to have been approved by Lessor unless rejected, in whole or in part, in writing, within thirty (30) Business Days after their submission, as not being in conformity with such criteria, specifying the reasons for the rejection. If such Schematic Plans are not approved, Lessee will promptly redraw and resubmit same or, at Lessee's election, Lessee will have the right to terminate this Lease Agreement by sending written notice of termination to the Lessor within thirty (30) days of the date of such disapproval. If resubmission is required, review of the resubmission(s) will follow the process of the initial submission.

5.1.1.2 Lessee shall endeavor to cause Substantial Completion to occur on or before the eighteenth (18th) month anniversary of the Delivery of Possession Date (the "Anticipated Project Opening Date"). Subject to the provisions of Sections 5.1.5 and 19.1 hereof and the remainder of this Section, Lessee shall cause Substantial Completion to occur no later than the second (2nd) anniversary of the Delivery of Possession Date, provided, however, Lessee shall receive an extension of two (2) days for every one (1) day over thirty (30) days from the date of application taken by the City to issue the Building Permit.

5.1.1.3 All references contained in this Lease Agreement regarding Lessor approval of Plans is acknowledged to only include Lessor approval over the exterior of the Project (which specifically does not include Subtenant balcony spaces and Subtenant storefronts). Lessor shall have no approval rights and Lessee shall be permitted to alter the interior of the Project in its sole and absolute discretion and without consultation or approval from Lessor. Additionally, Lessee or Subtenants may alter Subtenant spaces without consultation with or approval of Lessor.

5.1.2 **Plans.** Promptly after the approval of the Schematic Plans by the

Lessor, Lessee shall cause construction plans and specifications for the Improvements to be prepared that materially conform to the Schematic Plans (collectively, the "Plans"). To the extent that the Plans do not materially conform to the Schematic Plans, Lessee shall submit the Plans to the Lessor for its review and approval pursuant to the procedure contained in Section 5.1.1.1 hereof (and if Lessor disapproves the Plans, Lessee shall have the right to terminate this Lease Agreement pursuant to Section 5.1.1.1 hereof). The Plans shall conform to applicable law in all material respects.

5.1.3 **Building Permits.** Promptly after the completion of Plans, Lessee shall apply for all necessary Building Permits and thereafter Lessee shall diligently pursue such application and pay all fees and costs associated therewith.

5.1.4 **Commencement of Construction.** Within six (6) months of the issuance of all necessary Building Permits, Lessee shall commence the construction of the Improvements and shall cause such Improvements to be diligently constructed and completed in accordance with the Plans. Lessee may construct the Improvements in stages or phases.

5.1.5 **Extension of Time.** Subject to the provisions of this Lease Agreement, the times within which Lessee must cause Substantial Completion to occur, may, at the request of Lessee, be extended in writing by Lessor, in the reasonable discretion of Lessor, upon good and sufficient cause therefor being shown by Lessee, for such period of time as Lessee reasonably requests. Notwithstanding the above, Lessor, shall extend the above described deadline at the request of Lessee in the event that Lessee on the date of such request for an extension, is making substantial progress towards the development of the Project and such request outlines or describes such progress.

5.1.6 **Certificate of Completion.** Lessee promptly after the substantial completion of the Improvements (exclusive of punchlist items and landscaping) in accordance with the provisions of this Lease Agreement, shall furnish Lessor with a Certificate of Completion.

5.1.7 **Restriction on Alterations.** After Substantial Completion, (a) without Lessor's prior approval, which approval shall not be unreasonably withheld, conditioned or delayed, neither Lessee nor any Subtenant shall make any material alterations, additions, or improvements to the exterior of the Project (exclusive of Subtenant balconies and Subtenant storefronts), except in conformity with the requirements of the Project Plan and this Lease Agreement, especially; and (b) without the need to request or obtain the Lessor's prior approval, Lessee and/or any Subtenant shall have the right to make all other alterations, additions or improvements to the Project, provided such work shall be performed in conformity with the requirements of the Project Plan and Applicable Law and in a good and workmanlike manner with materials, parts, and equipment of a quality equal to the original. Restoration, repair or replacement of all or any part of the Project that has been damaged by a fire or other casualty shall be deemed to be governed by the provisions of Section 5.1.7 hereof.

5.2 **Insurance.** Lessee, Lessee's contractor or the contractor performing construction and development work for Lessee at the Leased Premises shall provide and maintain, at no cost to Lessor, workers' compensation insurance in respect to such work and all risk builder's risk.

5.3 **Compliance with Laws.** Subject to the provisions of Section 19.23 hereof, Lessee shall, in the performance of any construction and development work by Lessee at the Leased Premises, materially comply with all applicable requirements of the zoning ordinances and building codes and all other laws, ordinances, rules, orders and regulations of all governmental and quasi-governmental authorities having jurisdiction thereof, and the Improvements constructed by Lessee, when completed, shall materially comply with all applicable laws, ordinances, rules, orders and regulations of any and all governmental and quasi-governmental authorities having jurisdiction thereof and of the local Board of Fire Underwriters or any similar body, and shall comply with all matters to which this Lease Agreement is subject as then in effect.

5.4 **Permits and Licenses.**

5.4.1 Except as otherwise set forth in this Lease Agreement, Lessee shall, at its sole cost and expense, procure all necessary permits and licenses for the construction and development work performed by Lessee. Lessee recognizes and agrees that all Government Approvals which must be obtained for the development of real estate in the City of Norfolk will likewise be required in conjunction with the Project and are not waived by virtue of this Lease Agreement.

5.4.2 From time to time from and after the Effective Date, at the request of Lessee in each instance, Lessor shall, at no cost to Lessee: (a) transfer into Lessee's name any of Lessor's transferable licenses affecting the Leased Premises and desired by Lessee; (b) authorize Lessee to prepare, execute and file for all necessary Governmental Approvals and cooperate with and assist Lessee in obtaining all necessary Government Approvals, in connection with the construction of any of the Improvements, and any subsequent modification, renovation, and/or reconstruction of any of the Improvements and with the operation of the Project; and (c) assist one or more Subtenants designated by Lessee in obtaining all necessary permits and approvals, including subdivision approvals, zoning variances and special exceptions, alcoholic beverage control licenses, in connection with the initial construction of such Subtenant's improvements and any subsequent modification, renovation, and/or reconstruction of such Subtenant's improvements and with the operation of such Subtenant's business in the Project.

5.4.3 From and after the Effective Date, within ten (10) days after receipt of written request from Lessee in the event that Lessor is a necessary party, Lessor shall join in any and all applications of Lessee and any Subtenant designated by Lessee for zoning,

subdivision, permits, licenses and liquor licenses in connection with the construction, alteration, operation, or maintenance of all or any part of the Project.

5.5 **Mechanic's Liens.** Nothing herein contained shall be construed to authorize Lessee to subject Lessor's fee title in and to the Leased Premises to any liens of mechanics, artisans, laborers, materialmen, contractors or subcontractors, or to any other liens or charges whatsoever arising out of any construction and development work or arising in any other manner; and Lessee is hereby expressly prohibited from subjecting Lessor's title to any such lien or charges. Lessee agrees to promptly discharge (either by payment or by filing of the necessary bond, or otherwise) any mechanics', materialmen's or other lien against the Leased Premises or the Improvements which may arise out of any payment due for, or purported to be due for, any construction and development work or any other labor, services, materials, supplies or equipment furnished or alleged to have been furnished to or for Lessee and Lessee's Subtenants, provided, however, nothing in this Section 5.5 shall limit the right for Lessee to contest, by legal proceedings or otherwise any lien or charges.

5.6 **Title to Improvements.** To the fullest extent permitted by applicable tax law, during the Term title to all improvements located upon the Leased Premises, including Waterside, shall not vest in Lessor by reason of its ownership of fee simple ownership in the Leased Premises, but title shall vest in Lessee (and/or the applicable Subtenants, pursuant to each such Subtenant's lease, license or agreement with Lessee) and Lessee (and/or the applicable Subtenants, pursuant to each such Subtenant's lease, license or agreement with Lessee) shall be entitled to claim any depreciation on all such buildings, structures and other improvements for all taxation purposes.

5.7 **Termination of Lease.** Upon the termination of this Lease Agreement, whether by lapse of time or otherwise, Lessee shall vacate and surrender the Leased Premises together with any permanently affixed improvements then existing on the Leased Premises.

5.8 **No Lessor's Lien.** Lessor hereby waives any statutory landlord's lien Lessor has or ever may have and Lessor shall execute any commercially reasonable waiver to affect this waiver as a third party reasonably would require.

5.9 **Right of Access.** Lessee shall be given reasonable access to the Leased Premises upon the Effective Date and Lessee shall have access to the management offices located in Waterside upon the Effective Date at all reasonable times. Lessee shall be provided a key to the facility upon the Effective Date and one dedicated office in the management office located in Waterside, plus reasonable use of the remainder of the management offices. Lessee shall have the right to make exploratory type modifications to walls, floors, or the roof structure that do not impact negatively on the current operation of Waterside or any of the current tenants.

5.10 **Tenant Allowance – Performance Based Grants.** In consideration of and as an inducement for Lessee undertaking the development of the Project and the execution of

this Lease Agreement, Lessor shall provide Lessee with the “**NRHA Allowance**” (as that term is hereinafter defined), as a tenant allowance. On the Effective Date, the City and Lessor shall enter into the Performance Based Grant Agreement. The NHRA Allowance shall be distributed by Lessor in accordance with the terms and provisions of the Performance Based Grant Agreement.

6. Rent.

6.1 **Amount of Rent.** Lessee hereby covenants and agrees to pay Rent to Lessor as, and in the manner herein provided and subject to the terms, provisions and conditions herein set forth, without Notice or other notice or demand and, except as herein specifically provided herein, without any offset or deduction whatever.

6.2 **Base Rent/Rent Commencement Date/Triple Net Lease.**

6.2.1 Commencing on the Rent Commencement Date and continuing thereafter throughout the remainder of the Term, Lessee shall pay to Lessor an annual fixed rent (the “**Base Rent**”) of One Dollar (\$1.00) per annum payable in advance as of the Rent Commencement Date and on each anniversary of the Rent Commencement Date. Lessee may prepay its Base Rent for the Initial Term and any Extended Terms at any time.

6.2.2 The term “**Rent Commencement Date**” means the first day of the calendar month following the Reopening of the Leased Premises. Upon the request of Lessee, the parties hereto shall memorialize the Rent Commencement Date on a memorandum prepared by Lessee. Lessee shall have the right to cause such memorandum to be recorded among the Land Records.

6.2.3. “**Net**” Lease. This Lease Agreement shall be deemed and construed to be a completely net lease and Lessee shall pay to Lessor, net throughout the Term, the Rent hereunder free of any offset, abatement or other deduction whatsoever and without notice (including, without limitation, any Notice) or demand. Under no circumstances or conditions, whether now existing or hereafter arising, or whether or not beyond the present contemplation of the Parties, shall Lessor be required to make any payment of any kind whatsoever with respect to this Lease Agreement or be under any other obligation or liability hereunder except as herein otherwise expressly set forth.

7. Impositions.

7.1 **General.** From and after the Delivery of Possession Date, Lessee shall promptly cause all Impositions to be paid to the applicable governmental authority before the expiration of any grace period provided by applicable law for the payment thereof without interest. The parties shall apportion all Impositions at the beginning or end of the term of this Lease Agreement which shall, to the extent feasible occur on the Delivery of Possession Date

with an expense and subrent reconciliation occurring within sixty (60) days of the end of the calendar year in which the Delivery of Possession Date occurs with the Lessor and the Lessee working reasonably to reconcile the Impositions.

7.2 **Contests.** Lessee may, at its expense, contest in Lessor's name if necessary or otherwise in its own name any of the Imposition, in which event Lessee may defer payment thereof during the pendency of such contest provided Lessee does not allow any lien on the Leased Premises to be created or penalty imposed thereby. Lessee shall hold Lessor harmless from all costs, expenses, claims, losses or damages by reason of, in connection with, on account of, growing out of or resulting from any such contest. Such hold harmless agreement shall expressly survive the Expiration or earlier Termination of this Lease Agreement. Upon request by Lessee, Lessor shall execute in its capacity as fee owner and promptly deliver to Lessee any documents or pleadings associated with such content that Lessee may reasonably request.

7.3 **Assessed Valuation.** Lessee shall render and return the Leased Premises for taxing to all taxing jurisdictions and may, if Lessee shall so desire, endeavor at any time or times to obtain a lowering of the assessed valuation upon the Leased Premises for any year for the purpose of reducing Impositions thereon. In such event, Lessor will offer no objection so long as the same is without expense to Lessor, in effecting such a reduction, and upon request of Lessee, Lessor shall execute in its capacity as fee owner and promptly deliver to Lessee any documents or pleadings associated with Lessee's attempt. Lessee shall be authorized to collect any tax refund payable as a result of any proceeding Lessee may institute for that purpose and any such refund shall be deemed revenue of Lessee in the year in which it is received, subject, however, to any apportionment between Lessor and Lessee with respect to taxes paid or contributed by Lessor in the year in which this Lease Agreement expires, after deducting from such refund the reasonable costs and expenses, including reasonable legal fees, incurred in connection with obtaining such refund.

7.4 **Business Improvement District.** The Leased Premises border the Downtown Business Improvement District and Lessee agrees to be included within the Business Improvement District.

7.5 **Police Substation.** From time to time, Lessee has the right to include a police substation in the Project. Lessee shall have the right to alter its location, layout, and existence from time to time. Whether City Police officers use the substation is within the sole discretion of the City.

8. Exclusive, Non-Competition Provisions.

8.1 **Exclusive.** As of the Effective Date, neither the City nor NRHA will subsidize or provide a performance based grant for a restaurant and entertainment development of over 75,000 square feet similar to the Project for a period of ten (10) years from the Effective

Date.

8.2 **Non-Competition.** Provided Lessor and the City of Norfolk are not in default of this Lease Agreement, and there are no defaults under the Performance Based Grant Agreement, neither Lessee, nor any of its affiliates, shall develop a substantially similar restaurant and entertainment development of over 75,000 square feet within the area shown on **Exhibit "V"** during the Initial Term, provided, however, Lessor is aware that affiliates of Lessee own or control lands at the Effective Date of this Lease Agreement and the foregoing provisions should not apply to any of those lands (including, but not limited to, the Coliseum Central "Crossroads" Site, Pembroke Place Shopping Center and the Power Plant of Hampton Roads) and neither Lessee, nor any of its affiliates are precluded from pursuing any development on those lands. Lessor acknowledges and agrees that, without limitation, a traditional outlet, strip retail, enclosed mall, movie complex, residential, live music venues or any gaming/casino related property shall not violate this Section, even if same contains one or more restaurants, nightclubs, bars, retail stores and/or entertainment venues.

9. Marina Support Space, Marina, and Pedestrian Promenade

9.1 **Marina Support Space.** Upon the Delivery of Possession Date, Lessee, as landlord, and the City of Norfolk, as tenant, shall enter into a Sublease for an approximately 700 square foot space in the Project to be used as a Marina Support Space in substantially the form attached as **Exhibit "J"**.

9.2 Marina.

9.2.1. From and after the Effective Date, the City of Norfolk shall own, control, maintain and cause to be operated the waterside marina facilities (shown on **Exhibit "L"**, the "Waterside Marina") in a safe, professional and clean manner at all times during the Term. The City may cause its obligations hereunder to be accomplished by a third party; however, such delegation shall not relieve the City of such obligations. The City of Norfolk shall, throughout the Term, cause the Waterside Marina to be kept in good repair. The City of Norfolk acknowledges and agrees that the upkeep and operation of the Waterside Marina is important to Lessee and is vital to the success of the Project. All construction and maintenance of the Waterside Marina during the Term shall be undertaken and performed in a manner that will not have a material adverse effect or impact on the operation of the Project.

9.2.2. The City of Norfolk shall ensure that a minimum of \$1,000,000 is spent on the Waterside Marina within eighteen (18) months of the Effective Date. The Lessee shall have the right to review and comment on such request for proposals before same is issued. The City of Norfolk shall use good faith efforts to select a respondent to such request for proposals and enter into a contract with such respondent to implement such respondent's proposal.

9.2.3. From and after the Effective Date, the City of Norfolk shall consider, in good faith, any recommendations that Lessee may have concerning the operation, maintenance and utilization of the Waterside Marina, including the implementation of rules and regulations concerning the utilization of vessels docked along the Pedestrian Promenade. Except for cruise vessels like the Rover and Spirit of Norfolk, the City of Norfolk shall prohibit the sale of food, beverages and merchandise from any vessel that is docked at the Waterside Marina when so docked.

9.2.4. The City will cause the Marina to be used primarily as a transient marina, but longer term and other users are permitted. The intent is that the marina be operated to be harmonious with the Project and to maximize its use. Charter and rental vessels like a sailing ship are expressly permitted. Uses for Harborfest and other festivals are permitted, but subject to the prohibition on food sales. A gas station or fueling station is permitted but cannot be located on the portion of the Waterside Marina nearest the Project and may only be located on the piers farthest out into the water. Boats and other vessels shall not be stored on land at the Waterside Marina. No portion of the Waterside Marina shall be used as a boat repair facility.

9.2.5. Lessee, at no cost, shall be entitled to a portion of the Waterside Marina to construct a pier for outdoor seating, bar, cooking, and restaurant uses ("Pier Use") and Lessor and the City of Norfolk shall work in good faith if such a plan for a Pier Use is proposed by Lessee to document such use appropriately.

9.3 **Pedestrian Promenade.**

9.3.1. From and after the Effective Date, the City of Norfolk or Lessor shall own (and not sell to a third party), maintain and operate the Pedestrian Promenade and the sidewalks adjacent to the Project in a safe, professional and clean manner at all times during the Term. The City of Norfolk and Lessor acknowledge and agree that the upkeep and operation of the Pedestrian Promenade and the sidewalks adjacent to the Project are important to Lessee. All construction and maintenance of the Pedestrian Promenade and such sidewalks during the Term shall be undertaken and performed in a manner to minimize any material adverse effect or impact on the operation of the Project.

9.3.2. The City of Norfolk and Lessor hereby grant Lessee and its Subtenants, and their respective customers and invitees, a non-exclusive easement to use for no cost or fee, the Pedestrian Promenade and the sidewalks adjacent to the Project for access to the Leased Premises whenever the Project is open to the general public and for one hour before the Project opens to the general public and one hour after the Project closes to the general public. Lessee shall have the right and option, but not the obligation, to present live performances and entertainment on the Pedestrian Promenade. In addition, Lessee shall have the right from time to time for events and on Friday and Saturday nights from 6:00pm to the closing of the Project to use the Pedestrian Promenade and during those times restrict access to the Pedestrian Promenade to customers and invitees of Lessee or its Subtenants, including requiring the purchase of an

admission ticket, to limit access to the Pedestrian Promenade to individuals over 21 years of age, and to impose and enforce a dress code on the Pedestrian Promenade. The sale of food and beverage on the Pedestrian Promenade is prohibited except by Lessee and its Subtenants. In restricting access to the Pedestrian Promenade, Lessee may not completely block access through the Pedestrian Promenade and Lessee must preserve a path for pedestrians as shown on Exhibit "K".

9.3.3. With the exception of Lessee and its designated Subtenants, Lessor and the City of Norfolk shall not permit any person or entity (including any food trucks) to sell any food, beverages, merchandise or services on the Pedestrian Promenade and the sidewalks adjacent to the Project during the hours Waterside is open or any of Lessee's Subtenants are open and for one hour immediately after Waterside closes for the day.

9.3.4. The City of Norfolk shall permit Lessee, at the sole cost and expense of Lessee, as part of the Construction, to make improvements to the Pedestrian Promenade, including the demolition of the existing band stand. Any improvements hereunder which are not shown on the Project Plan or the Signage Plan, are subject to the City's reasonable approval of their design. Construction hereunder is not permitted unless and until the City approves the design. Approval may only be by the City Manager in writing, which approval shall not be unreasonably withheld.

9.3.5. Throughout the Term, the City of Norfolk shall maintain the Fountain Park (the "Park") as a public park similar to how it is presently maintained. Prior to making any improvements to the Park, the City of Norfolk shall consult with Lessee. Lessee shall have the right, from time to time, at no cost or fee, to use the Park, on an exclusive basis, for the presentation of live performances and events, and in connection with such events, sell, or permit its designees to sell, food, beverages and merchandise. During such performances and events (and a reasonable period before and after such live performances and events), Lessee shall have the right to control access to the Park, to impose dress codes, to require tickets for admission and impose reasonable rules and regulations. The right to use the Park hereunder is subject to its availability. The Park may not be used by Lessee without the written approval of the City Manager, which approval shall not be unreasonably withheld. The City shall maintain and publish a calendar of the scheduled uses of the Park and assist with the management of the coordination between Festevents, the City and Lessee.

9.3.6 The insurance required by Lessee under this Lease Agreement shall cover Lessee's uses of the Pedestrian Promenade and the Park to the extent applicable. Except to the extent arising out of the negligence or breach of this Lease Agreement by Lessor or the City of Norfolk, Lessee shall indemnify and hold Lessor and the City harmless for Lessee's use of the Pedestrian Promenade and the Park.

9.3.7 Mobile Food Vendor Prohibited Area. Notwithstanding anything in this Lease Agreement to the Contrary, during the Term and during anytime the Project is open

or any of Lessee's Subtenants hours of operation plus one hour after the Project closes, neither Lessor nor the City of Norfolk shall allow, grant, or otherwise permit a food truck, mobile food vendor, and/or any other mobile food or drink sales from any party other than Lessee and its Subtenants in the area shown on Exhibit "W-1", provided, however, during events at Fountain Park or Towne Point Park, Lessor and the City of Norfolk shall only be restricted from allowing mobile food vendors, trucks and/or any other mobile food or drink sales from within the area shown on Exhibit "W-2".

9.4 **Parking.** On the Effective Date, the City of Norfolk, acting by and through the Parking Division, shall enter into that certain Parking Agreement with the Lessee that is in the form attached hereto as Exhibit "T".

10. **Maintenance, Use and Alteration.**

10.1 **Prior to the Delivery of Possession Date/After the Delivery of Possession Date.**

10.1.1. Except as may be provided in this Lease Agreement, Lessor shall not be required to furnish any services or facilities, or to make any repairs or alterations, of any nature whatsoever with respect to the Leased Premises. Prior to the Delivery of Possession Date, Lessor shall continue to maintain and operate Waterside in the same manner that it maintains and operates Waterside on the date hereof and in substantial compliance with all applicable law. From and after the Effective Date, Lessor shall not: (a) transfer, sell, assign or pledge, in any way, its interest in Waterside; (b) encumber Waterside; (c) grant any mortgage or deed of trust on its interests in Waterside; (d) permit any liens to attach to its interests in Waterside; and/or (e) enter into any leases, license agreements or other occupancy agreements for all or any part of Waterside. In the event that Waterside is damaged by casualty prior to the Delivery of Possession Date, Lessor shall cause such damage to promptly repaired and/or replaced so that Waterside is in the same condition it was in on the Effective Date. Lessor shall cause all such damage to be repaired as soon as possible, but in any event, within one year of the date of such casualty. Any such restoration work shall be undertaken in consultation with Lessee and shall be performed in a good and workman like manner, in material compliance with all applicable laws and free of all liens.

10.1.2. Commencing on the Delivery of Possession Date, Lessee hereby assumes the full and sole responsibility for the condition, construction, operation, repair, replacement, maintenance and management of the Leased Premises and the Improvements. From and after the Delivery of Possession Date, Lessee shall maintain Leased Premises in good and safe condition and repair. From and after the Delivery of Possession Date, Lessor shall not have any responsibility for the maintenance or repair of the Leased Premises for the Term of this Lease Agreement. Notwithstanding anything to the contrary, commencing on the Delivery of Possession Date, Lessee shall be solely and exclusively responsible for the repair and maintenance of the Leased Premises, including any landscaping and sidewalks thereon.

10.2 Permitted Use & Government Approvals

10.2.1 Lessee shall have the right to develop and operate the Leased Premises for the Permitted Use. The Permitted Use includes the installation and operation of one or more Virginia Lottery terminals, but does not currently include the operation of the Premises as a casino or other gaming establishment, which is a use to which the City does not object but is a use that is not reflected within the financial terms of this Lease Agreement. In the event that the law of the Commonwealth of Virginia is changed to permit the possibility of developing and operating all or part of the Premises as a casino or other gaming establishment, at the request of Lessee, Lessor and Lessee shall enter an amendment to this Lease Agreement if terms including but not limited to agreeing to a modified rent reasonably satisfactory to Lessee and Lessor, both parties acting reasonably, are agreed upon. Moreover, at the request of Lessee, Lessor and the City shall cooperate with Lessee in obtaining any Government Approvals necessary to enable the Premise to be utilized as casino or other gaming establishment.

10.2.2 Lessor and the City acknowledge and agree that Lessee's ability to use the Leased Premises is contingent upon the suitability of the Leased Premises for the Permitted Use and Lessor and Lessee's ability to obtain and maintain all necessary Government Approvals. Lessor authorizes Lessee to prepare, execute and file all required applications to obtain Government Approvals for Lessee's Permitted Use under this Lease Agreement and Lessor and the City agree to reasonably assist Lessee with such applications and with obtaining and maintaining the Government Approvals. Moreover, Lessor and the City shall take no action, which would adversely affect Lessee's ability to use the Leased Premises for the Permitted Use. In addition, Lessor and the City will cooperate with and support Lessee in modifying, as necessary in Lessee's sole discretion, or complying with Virginia law to authorize the Permitted Use with regard to Lessee and its Subtenants.

10.2.3 Lessee, Lessor and the City acknowledge and agree that the redevelopment of Waterside and the use of the Leased Premises for the Permitted Use may require a special exception, however, it is acknowledged that Subtenants may obtain their own special exceptions. On the Effective Date, the City Manager will recommend to City Council a special exception for the Project identical to Exhibit "X". This Lease Agreement is conditioned upon the approval of the special exception for the Project as attached hereto as Exhibit "X" as part of Lessor's Work.

10.2.4 Both the Lessor and the City of Norfolk acknowledge that the Project is intended to be used primarily as a dining, bar, nightclub and entertainment project similar to one or more of the other Urban Properties and there are certain issues that may arise from time to time in the course of managing and operating a project of that nature beyond Lessee's reasonable control, such as noise, traffic congestion, parking shortages and large crowds. Lessor and the City of Norfolk agree that Lessee shall not be deemed in default of this Lease Agreement for issues beyond its control that may arise in connection with the operation of

the Project in a manner that is similar to any of the Urban Properties. Lessor and the City of Norfolk agree that Lessee shall have the right and power and is encouraged: (a) from time to time, to restrict access to the Leased Premises to persons 21 years old and older; (b) to adopt, modify and amend, from time to time, and enforce a dress code that applies to visitors of the Leased Premises, which dress code may result in an individual being denied access to the Leased Premises for a violation of the dress code; and (c) to adopt, modify and amend a code of conduct and/or rules and regulations concerning the use of the Leased Premises by Subtenants and invitees of Lessee and its Subtenants.

10.3 **Lessor and City Representative.** From and after the date hereof, the Lessor and the City of Norfolk shall designate a representative (a "City Representative") who shall be authorized to give all directions, consents, approvals, waivers or other acknowledgements under this Lease Agreement on the part of the Lessor and/or City and to receive any and all submissions from Lessee under this Lease Agreement. Lessee shall be entitled to rely on, and the Lessor and City agree to be bound by, any direction, consent, approval, waiver or other acknowledgement given by the City Representative, unless prior to the time such direction, consent, approval, waiver or other acknowledgement is given, the City Manager of the City (or his designee) gives written notice to Lessee that the City Representative has been changed. For the purpose of this Lease Agreement, Lessee shall not be required to rely on and may refuse to accept directions, consents, approvals, waivers or other acknowledgements from any other party, even if such party has apparent or actual authority for the Lessor and/or City. The City Manager of the City of Norfolk, and only the City Manager of the City of Norfolk, shall be entitled to change the City Representative at any time upon five (5) days written notice to Lessee, provided that the City Manager of the City shall appoint a replacement City Representative upon such removal of the prior City Representative or promptly in the event of death or disability of such City Representative. Lessee may ask for, and receive, reasonable evidence of such change or appointment and shall be entitled to rely on such evidence provided to it. The initial City Representative shall be the City Manager. Nothing herein shall be deemed to usurp the governmental authority or police powers of the City.

10.4 **Environmental Matters.**

(a) Lessee represents and covenants that (i) Lessee will not hereafter knowingly cause, allow or suffer to occur, a discharge, spillage, uncontrolled loss, seepage or filtration of oil or petroleum or chemical liquids or solids, liquid or gaseous products or hazardous waste (a "**spill**"), or hazardous substance as those terms are used in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as the same may be amended from time to time (the "**Act**") or other federal, state or local laws, regulations or ordinances, at, upon, under or within the Leased Premises or any contiguous real property.

(b) Lessee shall comply strictly and in all respects with the requirements of the Act and related regulations and with all other applicable environmental laws and regulations and shall notify Lessor promptly in the event of any spill of a hazardous

substance upon the Leased Premises of which Lessee becomes aware, and shall promptly forward to Lessor copies of all orders, notices, permits, applications or other communications and reports received by Lessee in connection with any such spill or any other matters relating to the Act or related regulations or any similar applicable laws or regulations, as they may affect the Leased Premises.

(c) At the request of Lessor, made from time to time, Lessee shall provide Lessor with a copy of the then current phase 1 environmental site assessment of the Leased Premises in the possession of the Lessee.

(d) Lessee shall indemnify Lessor, Lessor's successors, assigns and successors-in-title (collectively, the "**Lessor Indemnified Parties**") and hold the Lessor Indemnified Parties harmless from and against all loss, liability, damage and expense, including reasonable attorneys', consultants' and expert witness fees, suffered or incurred by the Lessor Indemnified Parties, or any of them, (i) under or on account of the Act or related regulations or any other applicable environmental laws or regulations, including the assertion of any lien thereunder; (ii) with respect to any spill or hazardous substance affecting the Leased Premises whether or not the same originates or emanates from the Leased Premises, or any other contiguous real property, including any loss of value of the Improvements as a result of a spill or hazardous substance; and (iii) with respect to any other matter affecting the Leased Premises within the jurisdiction of the Environmental Protection Agency or any similar state, federal or local agency or any successor to any thereof; provided, however, there shall be excluded from the within and foregoing indemnification and hold harmless agreement any loss, liability, damage or expense, including reasonable attorneys', consultants' and expert witness fees, suffered or incurred by the Lessor Indemnified Parties, or any of them, (a) with respect to any spill or hazardous substance affecting the Leased Premises, whether or not the same originated or emanated from the Leased Premises, which originated or emanated prior to the Delivery of Possession Date, and (ii) with respect to any spill or hazardous substance affecting the Leased Premises, whether or not the same originated or emanated from the Leased Premises, which is caused by the Lessor Indemnified Parties, or any of them, or their respective agents, employees, officers or contractors. The within and foregoing indemnification and hold harmless agreement shall expressly survive the Expiration or earlier Termination of this Lease Agreement.

(e) Lessor shall indemnify Lessee, Lessee's successors, assigns and successors-in-title (collectively, the "**Lessee Indemnified Parties**") and hold the Lessee Indemnified Parties harmless from and against all loss, liability, damage and expense, including reasonable attorneys', consultants' and expert witness fees, suffered or incurred by the Lessee Indemnified Parties, or any of them, (i) under or on account of the Act or related regulations or any other applicable environmental laws or regulations, including the assertion of any lien thereunder; (ii) with respect to any spill or hazardous substance affecting the Leased Premises whether or not the same originates or emanates from the Leased Premises, or any other contiguous real property, including any loss of value of the Improvements as a result of a spill or hazardous substance; and (iii) with respect to any other matter affecting the Leased Premises

within the jurisdiction of the Environmental Protection Agency or any similar state, federal or local agency or any successor to any thereof; provided, however, there shall be excluded from the within and foregoing indemnification and hold harmless agreement any loss, liability, damage or expense, including reasonable attorneys', consultants' and expert witness fees, suffered or incurred by the Lessee Indemnified Parties, or any of them, (a) with respect to any spill or hazardous substance affecting the Leased Premises, whether or not the same originated or emanated from the Leased Premises, which originated or emanated after the Delivery of Possession Date, and (ii) with respect to any spill or hazardous substance affecting the Leased Premises, whether or not the same originated or emanated from the Leased Premises, which is caused by the Lessee Indemnified Parties, or any of them, or their respective agents, employees, officers or contractors. The within and foregoing indemnification and hold harmless agreement shall expressly survive the Expiration or earlier Termination of this Lease Agreement.

10.5 **Operational Standard.** Lessee recognizes and acknowledges that the manner in which the Leased Premises are used and operated is a matter of concern to the Lessor by reason of the impact which the use of the Leased Premises is expected to have upon the downtown area of the City of Norfolk. In order to give Lessor assurance as to the manner in which the Leased Premises will be used and operated, Lessee agrees that at all times after the Rent Commencement Date,

- shall:
- (a) Lessee covenants and agrees that, at no cost to Lessor, it
 - (i) Manage the Project in a manner similar to one or more of the Urban Properties and use its reasonable efforts to lease the Project to Subtenants that are consistent with the operation of the Project for the Permitted Use, as same may evolve from time to time.
 - (ii) Keep the ground floor Common Areas open to the public, subject to any interrupting incident for repair, alteration, remodeling, or construction/reconstruction, in a manner similar to the Urban Properties and at least three hundred thirty (330) days a year;
 - (iii) Make reasonable efforts to market, or cause others to market, the Project by promotions and advertising;
 - (iv) Maintain the Project (exclusive of Subtenant spaces) in a good, clean and sanitary condition;

- (v) Comply with all applicable laws, ordinances and regulations applicable to the operations and actions of the Lessee;
 - (vi) Use its reasonable efforts to impose minimum hours and days of operation on each ground floor Subtenant that operates in the Project;
 - (vii) Keep the Project and all furniture, fixtures, HVAC systems, equipment and other personal property of Lessee that serve the Project in good repair and condition; and
 - (viii) Obtain and maintain, or cause others to obtain and maintain, all appropriate or required licenses and permits required for the operation of the Project by Lessee (as opposed to the operation of Subtenant's spaces) and use reasonable efforts to cause each Subtenant to do same with regard to such Subtenant's space in the Project.
- (b) Lessee covenants and agrees with respect to the Project that it shall use its reasonable efforts to not:
- (i) Cause or knowingly permit objectionable odors to emanate or be dispelled from the Project (cooking odors typical of restaurants shall not be objectionable);
 - (ii) Permit undue accumulations of garbage, trash, rubbish, or any other refuse, fail to remove the same at regular intervals, fail to keep such refuse in proper containers in the interior of the Project or other places designated therefore by Lessee until called for to be removed, or fail to keep the Project free of rodents, roaches, or other pests; and
 - (iii) Commit waste, or knowingly permit any Subtenant to commit waste, upon the Project.

10.6 **Subtenant Compliance.** Lessee shall use its reasonable efforts (without any requirement to reduce rent or make other concessions, to refuse to enter into a Sublease with a Subtenant that will not agree to comply or to sue a Subtenant or terminate a Sublease of a Subtenant as a result of a failure to comply) to cause each Subtenant of the Project to comply with the operational standards set forth in Section 10.5 (b) hereof and to meet the following additional standards:

(a) To the extent that a Subtenant elects to operate a retail, restaurant or entertainment operation in its space in the Project, endeavor to maintain and operate its respective business operations in a manner that is consistent with the standards maintained by the other Subtenants of the Project, including maintaining the condition of its respective premises, tenant improvements, and personal property in good condition and repair;

(b) Maintain its premises, including without limitation, fixtures, kitchen and other equipment, and other personal property in good, clean, sanitary, and orderly condition and make all repairs and replacements thereof when necessary, prudent, and in accordance with commercially reasonable standards;

(c) Comply with all applicable laws; and

(d) Obtain and maintain, or cause others to obtain and maintain, all appropriate or required licenses and permits required for the operation of such Subtenant's premises in the Project.

10.7 **Signage and Lighting.**

(a) Lessor will work reasonably with Lessee on the process of obtaining any needed City of Norfolk (or any other relevant governmental agency) signage and lighting approvals so that the type, number and size of the signage typical in the Urban Properties are able to be constructed and maintained at the Project. The City of Norfolk and Lessor recognize that bold and vibrant signage and lighting is critical to the success of the Project and all parties will work together in getting a master sign package approved as part of the Section 5.1 approvals so individual signs do not need to go through the standard signage approvals.

(b) The signage plan set forth on **Exhibit "I-2"** (the "Signage Plan") establishes the general plan pursuant to which the initial development of the signage for the Project by Lessee shall occur in accordance with and subject to the terms of this Lease Agreement. On or prior to the Effective Date, Lessor will apply to the City to amend and/or replace the existing Localized Alternative Sign Overlay District ("LASOD") for Waterside with a LASOD that complies in all respects with the Signage Plan. The City will cooperate with Lessor and Lessee in obtaining such approval. Moreover, Lessor and the City will take no action which would adversely affect the approval of such LASOD.

11. **Insurance.**

11.1 **Coverage.** During the Term, Lessee, at no cost and expense to Lessor, will keep and maintain, or cause its Subtenants to keep and maintain the following types of insurance described in Subsections 11.1.1 through 11.1.3. Such insurance may be provided by separate or blanket insurance policies. All such insurance policies shall provide that they cannot be canceled, modified, or terminated until at least thirty (30) days after written notice thereof is

given to the insured, and the Lessee and Lessor shall all be notified by the affected insured within fifteen days of such notice being provided by an insurer to the affected insured. All insurance policies required hereunder shall be renewed, or caused to be renewed, by Lessee and proof of such renewals delivered to by the Lessee to the Lessor, at least thirty (30) days prior to their respective expiration dates. All insurance policies hereunder shall include the Lessor as an additional insured.

11.1.1 (a) During construction of any Improvements on the Leased Premises, builder's risk insurance as provided in Section 5.2 hereof; and coverage provisions and policy limits shall be no less than the amount it would take to complete the design, construction and equipping of any structure or facility subject to this agreement in the event of partial or complete destruction of such structures and facilities; and (b) after completion of any construction, maintain broad form property insurance against damage by fire, wind, theft, vandalism and/or other perils in an amount equal to the greater of (i) full replacement value on Lessee's inventory, furniture, fixtures and equipment and all parts of the Premises inclusive of foundations, footings and underground piping, for which the User is responsible as described in this agreement, or (ii) a greater amount if required by the Leasehold Mortgagee that holds the "first" Mortgage (a "first" Mortgage is a Leasehold Mortgage that has first priority over any and all other Leasehold Mortgages) on the Leased Premises; such insurance policy shall provide that any and all loss be adjustable with and payable to Lessee or, if required by a Leasehold Mortgagee, to such Leasehold Mortgagee.

11.1.2 At all times while Lessee has employees, Lessee shall maintain statutory Workers' Compensation Insurance, and Employer's Liability Insurance, with a limit of at least \$500,000 per accident/disease, and policy limit of \$500,000; In the event the Lessor's activities are to be performed on or over navigable waterways, a Longshoremen and Harbor Workers' Compensation Act Endorsement and a Maritime Coverage.

11.1.3 Commercial General Liability Insurance, CGL, and/or excess liability insurance, shall be written on an approved ISO occurrence-based form for coverage in the Commonwealth of Virginia, and shall cover liability arising from the premises and Lessor's operations covered by this agreement as well as within the policy or by endorsement coverage independent users, personal and advertising injury and contractual liability. Policy limits of liability shall be at least \$5,000,000 combined single limits for bodily injury or death and property damage, and at least \$5,000,000 personal and advertising injury. Lessor and the City of Norfolk, Virginia shall be named as additional insured under all Lessee's general and excess or umbrella insurance policies maintained as part of this agreement.

11.1.4 Lessee shall maintain, or cause the Lessee's subcontractors and sub-tenant's to maintain appropriate or commercially reasonable/standard liability insurance coverage that will protect against professional architect and engineer liability risks

associated with any Lessee, subcontractor or subtenant construction and, or, improvements, affecting the properties included in this agreement. Such coverage shall be in effect during construction and for three years following the completion of construction. Limits of such coverage shall be at least \$1,000,000 per claim and \$1,000,000 aggregate.

11.1.5 Pollution Legal Liability Insurance is required if any hazardous material or waste is to be transported or disposed of off of the property subject to this agreement. Lessee, shall maintain, or cause its contractor, subcontractor or transporter to maintain this insurance. Lessee shall designate the disposal site, and must provide a certificate of insurance from the disposal site operator to the City. The policy shall name Lessor and the City of Norfolk, Virginia as additional insureds, with limits of liability of not less than \$1 million per claim. Further, any additional insurance coverage, permits, licenses and other forms of documentation required by Federal or State agencies and/or related state and local laws, rules and regulations shall be obtained by the Lessee.

Subject to the approval of Lessor, Lessee may procure and maintain a "blanket" All Risk policy to satisfy the requirements of this Section 11.1, which may cover other property or locations of Lessee and its Affiliates and/or the Affiliates of a member of Lessee. Lessor's approval of a "blanket" policy may not be unreasonably withheld and is required if the "blanket" policy provides coverage equivalent to each of the individual, separate insurances required.

11.2 **Company and Certificate Requirements.** All insurance prescribed by Sections 11.1 hereof shall (a) be procured from financially sound and reputable insurers licensed to do business in the Commonwealth of Virginia and have an A.M. Best rating of not less than A-8 or, if not rated with A.M. Best, the equivalent of A.M. Best's surplus size of A-8 (or otherwise approved by Lessor, which approval shall not be unreasonably withheld, conditioned or delayed), (b) be in such form and with such provisions as are generally considered standard provisions for the type of insurance involved, and (c) be evidenced by a certificate of insurance naming Lessor as an additional insured, as its interest may appear.

11.3 **Other Insureds - Notice to Lessor of Cancellations.** All insurance policies carried by or for Lessee in accordance with the provisions of this Lease may contain a mortgagee and loss payee clause in favor of all Leasehold Mortgagees and shall include Lessor as an additional insured. All such insurance policies shall provide that they cannot be canceled, modified, or terminated until at least thirty (30) days after written notice thereof is given Lessor. All insurance policies required hereunder shall be renewed by Lessee and proof of such renewals delivered to Lessor, at least thirty (30) days prior to their respective expiration dates.

11.4 **Indemnity.**

11.4.1 Subject to Section 11.4.2, and except to the extent arising out of the negligence or breach of this Lease Agreement by Lessor or the City of Norfolk, Lessee shall

indemnify, defend and hold harmless Lessor and the City of Norfolk against all liabilities, obligations, damages, judgments, penalties, claims, costs, charges and expenses, including, without limitation, reasonable architects' and attorneys' fees, which may be imposed upon, incurred by, or asserted against Lessor or the City of Norfolk and arising, directly or indirectly, out of or in connection with the Leased Premises or (i) Lessee's breach of its obligations under this Lease Agreement, (ii) the acts or negligence of the Lessee Related Parties, or (iii) the use or occupancy of the Leased Premises by the Lessee. If any action or proceeding is brought against any of the Lessor or the City of Norfolk by reason of any of the foregoing, Lessee shall reimburse the Lessor or the City of Norfolk the cost of defending such action or proceeding or, upon Lessor or the City of Norfolk's written request and at Lessee's sole cost and expense, resist and defend such action and proceeding by counsel reasonably approved by the Lessor or the City of Norfolk respectively. Any such cost, damage, claim, liability or expense incurred by the Lessor or the City of Norfolk for which Lessee is obligated to reimburse Lessor and the City of Norfolk hereunder or under this Lease Agreement shall be deemed Additional Rent due and payable within five (5) days after notice to Lessee that payment is due. This Section 11.4.1 shall survive any termination or expiration of this Lease Agreement.

11.4.2 Except to the extent arising out of the negligence of or breach of this Lease Agreement by Lessee, Lessor and the City of Norfolk shall indemnify, defend and hold harmless Lessee and the Lessee Indemnified Parties against all liabilities, obligations, damages, judgments, penalties, claims, costs, charges and expenses, including, without limitation, reasonable attorneys' fees, which may be imposed upon, incurred by, or asserted against Lessee or the Lessee Indemnified Parties and arising directly or indirectly out of or in connection with any act, incident, breach of contract, or similar matter relating to the Leased Premises and occurring prior to the Delivery of Possession Date, the BAR Claims, and/or Lessor's breach of its obligations under this Lease Agreement. If any action or proceeding is brought against Lessee or any of the Lessee Related Parties by reason of any of the foregoing, Lessor shall reimburse Lessee and the Lessee Indemnified Parties the cost of defending such action or proceeding by counsel reasonably approved by the Lessee Related Parties or, upon the written request of Lessee or any of the Lessee Indemnified Parties and at Lessor's sole cost and expense, resist and defend such action. Any such cost, damage, claim, liability or expense incurred by Lessee or the Lessee Indemnified Parties for which Lessor is obligated to reimburse the Lessee or the Lessee Indemnified Parties hereunder or under this Lease Agreement shall be due and payable to Lessee or to Lessee's designee within fifteen (15) days after notice to Lessor that payment is due. This Section 11.4.2 shall survive any termination or expiration of this Lease Agreement.

12. Damage or Destruction.

12.1 Application of Fire and Extended Coverage Insurance Proceeds and Obligation to Reconstruct.

12.1.1 Except as otherwise provided in Subsections 12.1.2 and 12.1.3 hereof, all sums payable for loss and damage arising out of the casualties covered by the fire and

extended coverage policies of Lessee shall be used to restore and, if necessary, rebuild any Improvements existing or being constructed prior to such casualty, and, subject to the terms of any Leasehold Mortgage, shall be payable directly to Lessee. Any reconstruction required under this Section 12 shall be commenced within one year after the date of such casualty and pursued with reasonable diligence to completion.

12.1.2 In case that Lessee shall have authorized any Leasehold Mortgagee on Lessee's behalf or in its stead to enter upon the Leased Premises and undertake or prosecute the reconstruction or repair of any Improvements damaged or destroyed by fire or other casualty, and to have and receive for Lessee or such Leasehold Mortgagee's use for such purpose such insurance proceeds, then in that case said insurance proceeds shall be equally available to such Leasehold Mortgagee as to Lessee, and they shall in like manner and to like extent at the request of any such Leasehold Mortgagee, be applied to the reconstruction or repair of any such improvements so damaged or destroyed.

12.1.3 Notwithstanding anything in the foregoing to the contrary, (i) in the event of a total or substantially complete destruction of the entire Improvements, (ii) in the event that Lessee determines that it would be uneconomical to cause the same to be repaired, restored or replaced, or (iii) in the event that as a result of a casualty, Subtenants occupying at least forty percent (40%) of the Project damaged by such casualty terminate their Subleases, Lessee (or Lessee and the Leasehold Mortgagee, as the case may be) may elect to raze all or part of the Improvements thereon (or abandon same in a safe condition) in lieu of reconstruction. In addition, in the event of the occurrence of clause 12.1.3 (i) or (ii), Lessee may terminate this Lease Agreement provided it gives to Lessor notice of such termination not more than twelve (12) full months after the date of the casualty. In the event Lessee elects not to restore the Improvements or part thereof, all insurance proceeds actually received by Lessee shall be applied first by Lessee to the payment of all sums due and owing all Leasehold Mortgagees and Subtenants, with the balance, if any, applied second by Lessee to raze all or part of the Improvements (and/or put same in a clean, safe and stabilized condition), and with the remaining balance, if any, remaining after the payment of the above priorities divided and distributed by Lessee between Lessor and Lessee as if it were remaining condemnation proceeds in accordance with the provisions of Section 13.2 (Fourth) hereof.

13. **Condemnation.**

13.1 **General.** If, at any time after the Effective Date, the Leased Premises, the Improvements, or any part thereof shall be condemned and taken by the United States of America, the Commonwealth of Virginia or any other authority or Entity having the power of eminent domain, then the provisions of this Section 13 shall apply to such condemnation proceedings and the distribution of any awards pertaining thereto.

13.2 **Entire Leased Premises Taken by Eminent Domain.** If the fee simple title in, or permanent possession of all of, the Leased Premises is taken by a governmental or

other authority under the power of eminent domain, then this Lease Agreement shall terminate (or be suspended for the duration of the temporary taking) as of the taking date, and any Rent shall be prorated and paid by Lessee to the date of such taking. The award of damages (including all damages received in such proceedings by Lessee or Lessor) shall be promptly paid as follows, in the following order of priorities:

First: There shall be paid all expenses, if any, including reasonable attorneys fees, incurred by Lessor and Lessee in such condemnation suit or conveyance (except that nothing contained in this Section shall require payment to Lessor of costs and expenses it may incur in the event that Lessor or the City of Norfolk, Virginia, or any agency thereof is the condemning authority);

Second: The balance, if any, remaining shall be applied and distributed to the payment of any indebtedness secured by all Leasehold Mortgages that constitute liens on Lessee's interest in the Leased Premises;

Third: The balance, if any, remaining after the payment of the first two priorities shall be applied and distributed to pay each Subtenant any amount to which such Subtenant is entitled for its leasehold improvements, and the value of such Subtenant's leasehold interests and moving expenses, but only to the extent permitted in such Subtenant's lease; and

Fourth: The balance, if any, remaining after the payment of the above priorities shall be divided between the parties, with Lessee receiving fifty percent (50%) of such proceeds and Lessor receiving fifty percent (50%) of such proceeds and distributed accordingly (except that nothing contained in this Section shall require payment to Lessor of any amounts hereunder in the event that the City of Norfolk, Virginia, or any agency thereof is the condemning authority).

13.3 Partial Taking of Leased Premises by Condemnation.

13.3.1 In the event that less than all of the Leased Premises (or only an interest therein) is taken for any public use or purpose by the exercise of the power of eminent domain, or shall be conveyed by the parties acting jointly to avoid proceedings of such taking, then (a) this Lease Agreement and all the covenants, conditions, and provisions hereunder shall be and remain in full force and effect as to all of the Leased Premises not so taken or conveyed, and (b) except as provided in Section 13.3.2, Lessee shall remodel, repair, and restore the Improvements to such condition at least equal to the quality prior to condemnation taking into consideration the fact of the condemnation.

The award of damages (including all damages received in such proceedings by Lessee, Lessor) shall be promptly paid as follows, in the following order of priorities:

First: There shall be paid all expenses, if any, including reasonable attorneys' fees, incurred by each party in such condemnation suit or conveyance (except that nothing contained in this Section shall require payment to Lessor of costs and expenses it may incur in the event that Lessor or City of Norfolk, Virginia or any agency thereof is the condemning authority);

Second: The balance, if any, remaining after the payment of the first priority shall be applied and distributed to pay each Subtenant whose space is taken any amount to which such Subtenant is entitled for its leasehold improvements and the value of such Subtenant's leasehold interests and moving expenses, but only to the extent permitted in such Subtenant's lease;

Third: There shall be paid to Lessee the amount required to enable Lessee to remodel, repair, and restore any Improvements so that they will be comparable to the improvements prior to condemnation, taking into consideration the fact of the condemnation; provided however, at the election of the "first" Leasehold Mortgagee, this priority "third" shall be subordinated to priority "fourth".

Fourth: The balance, if any, remaining shall be applied and distributed to the payment of any indebtedness secured by all Leasehold Mortgages that constitute liens on Lessee's interest in the Leased Premises; and

Fifth: The balance, if any, remaining after the payment of the above priorities shall be divided between the parties, with Lessee receiving fifty percent (50%) of such proceeds and Lessor receiving fifty percent (50%) of such proceeds and distributed accordingly (except that nothing contained in this Section shall require payment to Lessor of any amounts hereunder in the event that the City of Norfolk, Virginia, or any agency thereof is the condemning authority).

13.3.2 If reconstruction is not feasible, or if the Improvements remaining after such taking is no longer economically viable, in each case as determined by Lessee in its reasonable discretion within one year after the date of the taking, then this Lease Agreement shall terminate as to the Leased Premises not so taken as of the date of such taking and the award or awards of damage shall be promptly paid as follows, in the following order of priorities:

First: There shall be paid all expenses, if any, including reasonable attorneys fees, incurred by the parties hereto in such condemnation suit or conveyance (except that nothing contained in this Section shall require payment to Lessor of costs and expenses it may incur in the event that Lessor, the City of Norfolk, Virginia or any agency thereof is the condemning authority);

Second: Lessee shall be paid such funds, to raze and remove or stabilize all improvements on the Leased Premises;

Third: The balance, if any, remaining after the payment of the first two priorities shall be applied and distributed to the payment of any indebtedness secured by all Leasehold Mortgages that constitute liens on Lessee's interest in the Leased Premises;

Fourth: The balance, if any, remaining after the payment of the first three priorities shall be applied and distributed to pay each Subtenant any amount to which such Subtenant is entitled for its leasehold improvements and the value of such Subtenant's leasehold interests and moving expenses, but only to the extent permitted in such Subtenant's lease; and

Fifth: The balance, if any, remaining after the payment of the above priorities shall be divided between the parties, with Lessee receiving fifty percent (50%) of such proceeds and Lessor receiving fifty percent (50%) of such proceeds and distributed accordingly (except that nothing contained in this Section shall require payment to Lessor of any amounts hereunder in the event that the City of Norfolk, Virginia, or any agency thereof is the condemning authority).

13.4 Temporary Taking. If the whole or any part of the Leased Premises or the Improvements or of Lessee's interest in this Lease Agreement shall be taken in condemnation proceedings or by any right of eminent domain for a temporary use or occupancy, the Term shall not be reduced or affected in any way and Lessee shall continue to pay in full the Base Rent without reduction or abatement in the manner and at the times herein specified. Except only to the extent that Lessee is prevented from so doing pursuant to the terms of the order of the condemning authority, Lessee shall continue to perform and observe all of the other covenants, agreements, terms and provisions of this Lease Agreement as though such taking had not occurred. In the event of any such taking Lessee shall be entitled to receive the entire amount of any award made for such taking whether such award is paid by way of damages, rent or otherwise; provided, however, if the period of temporary use or occupancy shall extend beyond the date scheduled for the Expiration of the Term, such award, after payment to Lessor therefrom to the estimated cost of restoration of the Improvements to the extent that any such award is intended to compensate for damage to the Improvements, shall be apportioned by Lessor and Lessee as of such date of Expiration in the same ratio that the part of the entire period for which such compensation is made falling before the date of Expiration and that part falling after, bear to such entire period.

13.5 Condemnation Proceedings. Lessee, Lessor, any fee mortgagee and any Leasehold Mortgagee shall each have the right, at its own expense, to appear in any condemnation proceeding and to participate in any and all hearings, trials and appeals therein.

13.6 Notice of Condemnation. In the event Lessor or Lessee shall receive notification of any proposed or pending condemnation proceeding affecting the Leased Premises

or the Improvements, the Party receiving such notification shall promptly notify, by Notice, the other Party.

13.7 **Policy Against Encouraging Condemnation.** Lessor shall not actively seek condemnation, by eminent domain or otherwise, on any part of the Leased Premises.

14. **Assignments.**

14.1 **Restriction Against Dispositions.**

14.1.1 Until Substantial Completion of the Project, Lessee shall not make or create, or suffer to be made or created, any Disposition, without the prior written approval of the Lessor, except to enter into leasehold mortgage financing as permitted by Section 16. Thereafter, Lessee may (i) without the need to request or obtain the consent of Lessor, make or create, or suffer to be made or created, a Disposition to a Qualified Assignee or (ii) with the approval of Lessor, not to be unreasonably withheld, a Disposition to any Entity in each case satisfying the requirements of Section 14.1.3 below.

14.1.2 In the event that pursuant to the provisions of this Section 14.1 a request for approval of Lessor for a Disposition is made by Lessee, Lessor shall, by notice to Lessee, approve or deny such request for approval within thirty (30) days of Lessor's receipt of such request, time being of the essence.

14.1.3 In connection with a Disposition, the assignee shall assume all obligations of Lessee under this Lease Agreement accruing from and after the effective date of such Disposition by a written agreement (the "Assumption Agreement") to which Lessor is either a party or in which Lessor is specified to be a beneficiary, a copy of which Assumption Agreement shall be promptly provided to Lessor following the Disposition to evidence the assignment and assumption in question. The provisions of this Section 14.1.3 shall not apply to Transfers, Subleases or Leasehold Mortgages.

14.2 **Permitted Dispositions to Subtenants.** Notwithstanding anything in Section 14.1 or other Sections of this Lease Agreement to the contrary, Lessee may enter into Subleases or other contractual agreements with Subtenants for parts (but less than all) of Lessee's leasehold interest in the Leased Premises, at any time and from time to time from and after the Effective Date, with such Subtenants and upon such terms and conditions as Lessee shall, in its sole discretion, deem fit and proper. Notwithstanding anything in this Section 14.2 to the contrary, a Sublease or Subleases may not be used as a way to circumvent the assignment limitations or other provisions of Section 14 or Section 14.1, provided, however, Lessee shall have the right, from time to time, to lease all or any part of the Project to one or more Subtenants, that may or may not be an Affiliate of Lessee, that operate one or more businesses in the Project, such as a bar, restaurant or nightclub, that are consistent with the Permitted Use and this Section 14.2. Such a Subtenant shall have the right to sublease or license portions of its

leased premises to third parties for the operation of businesses that are consistent with the Permitted Use.

14.3 **Liability.** In the event of a Disposition of all of the interest of Lessee concerning the Leased Premises, upon Lessee's delivery of an Assumption Agreement pursuant to Section 14.1.3, Lessee shall be relieved of all further liability arising hereunder except for obligations of Lessee under this Lease Agreement that accrued before such Disposition which remain uncured.

14.4 **Obligations of Subtenants to Lessor.** Any Subtenant or other permitted occupant is not a successor or assignee of Lessee's obligations to Lessor merely by being a Subtenant or an occupant.

14.5 **Project Financing and Mortgages.** The provisions of this Section 14 are not intended to modify or supersede any of the rights granted Lessee, any Leasehold Mortgagee and any Subtenant under Sections 15 and 16 hereof. In the event that the provisions of this Section 14 conflict with or are inconsistent with the any of the other provisions of Sections 15 and/or 16 hereof, the provisions of Sections 15 and 16 hereof shall control and the provisions of this Section 14 shall be construed and interpreted accordingly.

15. **Subleases.**

15.1 **Right to enter into Subleases.** From and after the Effective Date, Lessee shall have the right, without the need to request or obtain the consent of Lessor, to sublease; or sublet portions (but less than all) of the Leased Premises at any time and from time to time. Each Sublease shall be subject and subordinate to this Lease Agreement. Lessor acknowledges and agrees that Lessee may enter into subleases with affiliated companies to the Lessee and acknowledge that part of Lessee's strength as a tenant is this ability. Notwithstanding anything in this Section 15.1 to the contrary, the right to enter into subleases may not be used to circumvent the provisions of Section 14.1.

15.2 **Non-disturbance and Attornment.**

15.2.1 Lessor covenants and agrees with Lessee for the benefit of each and every Subtenant from time to time occupying any part of the Leased Premises or having rights granted to it by Lessee with regard to the Leased Premises, which Subtenants shall be third party beneficiaries of this Section 15.2.1 as it may apply to each of them respectively, that in the event of a termination of this Lease Agreement, each such Subtenant may continue to occupy its premises under its pre-existing Sublease and enjoy the rights granted to such Subtenant in such Sublease; provided such Subtenant shall then attorn to Lessor (to the extent that such Subtenant occupies any part of the Leased Premises) and, if such Subtenant's Sublease does not provide for such attornment (and such Subtenant occupies any part of the Leased Premises), such Subtenant,

promptly after the termination of this Lease Agreement, provides Lessor with a written statement of such Subtenant whereby such Subtenant attorns to Lessor.

15.2.2 (a) In addition to the provisions of Section 15.2.1 hereof, Lessor covenants and agrees with Lessee that Lessor shall, at the request of Lessee made from time to time enter into a non-disturbance and attornment agreement with any Subtenant identified by Lessee, which non-disturbance and attornment agreement shall provide for all terms set forth in Section 15.2.1 hereof and be in commercially reasonable form. Lessor shall execute and deliver to Lessee such a non-disturbance and attornment agreement or specify in writing its objections thereto within twenty (20) days after receipt of the form thereof from Lessee, time being of the essence.

(b) Notwithstanding anything to the contrary contained in this Lease Agreement, (i) in the event that this Lease Agreement is terminated as a result of the Improvements being damaged by a casualty or as a result of all or part of the Leased Premises being condemned, Lessor shall not be obligated to restore or rebuild the Improvements; and (ii) Lessor shall not be liable for or obligated with respect to (A) any security deposits that it does not receive, (B) defaults and actions of Lessee, or (C) rents paid more than one (1) month in advance.

16. Leasehold Mortgage Financing.

16.1 Right to Leasehold Mortgage.

16.1.1 Lessee shall have the right at any time from and after the Effective Date to encumber its leasehold estate in the Leased Premises by any Leasehold Mortgage or other encumbrance or lien without the need to request or obtain the consent of Lessor; provided, however, until Substantial Completion the amount secured by any such Leasehold Mortgage shall not exceed the total costs (including financing and loan closing costs) incurred or to be incurred by Lessee in connection with the planning, development, financing, construction, leasing and/or operation of the Project nor may the Lessee's leasehold interest in the Leased Premises be used as security for loans the proceeds of which are not directly or indirectly utilized in connection with the Leased Premises, provided however, loan proceeds may be used to establish or fund reserves for Lessee or the Leased Premises and/or utilized by Lessee to fund distributions or dividends to its owners.

16.1.2 Lessee, and any Subtenant (to the extent permitted by Lessee), may grant security interests in or place liens upon any equipment or personal property (so long as such equipment or property is not a fixture integrated into the real property, which equipment or property could not be removed without permanent damage to the Leased Premises), without such interests or liens constituting a Disposition. Such equipment and personal property shall not be deemed to be "Improvements" under this Lease Agreement. From and after the Effective Date, at the request of Lessee, Lessor shall, within thirty (30) days of such request, execute and deliver

a landlord's waivers of liens (including customary terms such as restoration of the premises) to facilitate such security interests and liens upon such equipment and personal property, which landlord's waivers of liens shall be in a form and substance reasonably satisfactory to Lessee.

16.1.3 Each Subtenant (to the extent permitted by Lessee), shall have the right at any time to encumber its sub-leasehold estate by a mortgage or other encumbrance or lien without the necessity of obtaining the consent of Lessor (so long as the deed of trust, mortgage or other primary security instrument creating such Subtenant's mortgage refers to this Section 16 by reference). At the request of Lessee (given by notice), Lessor shall treat a mortgagee of a Subtenant's sub-leasehold estate in the same manner that it treats a Leasehold Mortgagee as to notice rights and shall enter into a non-disturbance agreement with such Subtenant's mortgagee, which agreement shall be in a form and substance that is reasonably acceptable to such Subtenant's mortgagee, all in accordance with Section 15.2 hereof and shall include cure rights to the extent permitted by Lessee or Lessee's Leasehold Mortgagee.

16.1.4 In any and all events, with the exception of encumbrances or liens created by a Subtenant in connection with a sub-leasehold financing by such Subtenant, Lessee shall promptly notify Lessor of any encumbrance or lien that has been created on or attached to Lessee's leasehold interests in the Leased Premises, whether by voluntary act of Lessee or otherwise. Such notices shall be in writing and, in the event of a voluntary act, in advance of such act. Lessee shall supply Lessor a copy of all Leasehold Mortgages.

16.2 **Leasehold Mortgagee Not Obligated to Construct**. Notwithstanding any of the provisions of this Lease Agreement to the contrary, including without limitation, those that are intended to be covenants running with the land, the holder of any Leasehold Mortgage authorized or permitted by this Lease Agreement (including any such holder who obtains title to the Leased Premises, or any part thereof as a result of foreclosure proceedings, or action in lieu thereof, and also including (a) any other party who thereafter obtains title to the Leased Premises, or such part from or through such holder or (b) any other purchaser at foreclosure sale other than the holder of the mortgage itself) shall in no way be obligated by the provisions of this Lease Agreement to construct or complete the Improvements or to guarantee such construction or completion; nor shall any covenant or any other provision in this Lease Agreement be construed to so obligate such holder.

16.3 **Rights of Leasehold Mortgagee.**

16.3.1. **Lessee's Acceptance.** Lessor agrees to accept performance and compliance by any Leasehold Mortgagee of and with any term, covenant, agreement, provision, or limitation on Lessee's part to be kept, observed, or performed by Lessee hereunder.

16.3.2. **Cure of Default.** Following an Event of Default by Lessee, Lessor will take no action to terminate this Lease Agreement and/or the Term as provided in Section 17, nor to re-enter and take possession of the Leased Premises or the Improvements thereon, unless it

shall first give Leasehold Mortgagee notice after the occurrence of any such Event of Default and stating the intention of Lessor on a date specified in such notice, to re-enter and take possession of the Leased Premises and the Improvements thereon. Notwithstanding such notice, this Lease Agreement and the Term shall not be terminated nor shall Lessor re-enter and take possession of the Leased Premises or the Improvements, if:

(a) such Event of Default can be cured by the payment of a fixed monetary amount and Leasehold Mortgagee shall make such payment within thirty (30) days after the date such notice is given; or

(b) such Event of Default can be cured with the exercise of reasonable diligence by Leasehold Mortgagee after obtaining possession of the Leased Premises and the Improvements, and Leasehold Mortgagee or Leasehold Mortgagee's designee, within ninety (90) days after the date of such notice, obtains the interest of Lessee in this Lease Agreement or Leasehold Mortgagee commences such proceedings (including, but not limited to, the filing of a petition for the appointment of a receiver) as it may deem necessary to obtain such possession (except that if Leasehold Mortgagee is precluded, notwithstanding the filing of a petition to the bankruptcy court for a waiver, from instituting or proceeding with such foreclosure by reason of a bankruptcy or insolvency proceeding filed by or against Lessee, said ninety (90) day period shall be extended by a period of time equal to the period during which Leasehold Mortgagee is so precluded from instituting or proceeding with such foreclosure) and thereafter diligently prosecutes such action and promptly upon obtaining such possession (or promptly upon its designee obtaining such possession) thereupon promptly commences (or its designee commences), and thereafter diligently pursues, the curing of such Event of Default; or

(c) such Event of Default is not capable of being cured by Leasehold Mortgagee, even if possession of the Leased Premises and the Improvements were obtained by Leasehold Mortgagee or its designee, and Leasehold Mortgagee, within ninety (90) days after the date such notice is given, either obtains Lessee's rights and interests in and to this Lease Agreement (or Leasehold Mortgagee's designee obtains such interest) or publishes any required notice of foreclosure or institutes foreclosure proceedings, as the case may be, and thereafter proceeds with diligence to acquire (or have its designee acquire) the interest of Lessee in this Lease Agreement (except that if Leasehold Mortgagee is precluded from instituting or proceeding with such foreclosure by reason of a bankruptcy or insolvency proceeding filed by or against Lessee, said ninety (90) day period shall be extended by a period of time equal to the period during which Leasehold Mortgagee is so precluded from instituting or proceeding

with such foreclosure), and such Event of Default, to the extent that the same shall have occurred prior to such acquisition of the interest of Lessee in this Lease Agreement by Leasehold Mortgagee or its designee, shall thereupon be deemed to have been waived.

16.3.3. Lease Termination; New Lease.

(a) In the event of the termination of this Lease Agreement prior to its stated expiration date, Lessor shall give Leasehold Mortgagee notice of such termination and shall enter into a new lease for the Leased Premises that is encumbered by such Leasehold Mortgagee's mortgage or deed of trust with Leasehold Mortgagee or, at the request of Leasehold Mortgagee, with an assignee, designee, or nominee of Leasehold Mortgagee for the remainder of the Term (and the period prior to the Rent Commencement Date) effective as of the date of such termination, at the rate and upon the same covenants, Leases, terms, provisions and limitations as are herein contained, provided that:

(i) Leasehold Mortgagee makes written request upon Lessor for such new lease within ninety (90) days after the giving of such notice of termination and such written request is accompanied by payment to Lessor of all amounts then due to Lessor in connection with the Leased Premises and the Improvements that is encumbered by such Leasehold Mortgagee's mortgage or deed of trust of which Lessor shall have given Leasehold Mortgagee notice;

(ii) Leasehold Mortgagee pays or causes to be paid to Lessor at the time of the execution and delivery of such new lease any and all additional sums which would at the time of the execution and delivery thereof be due under this Lease Agreement but for such termination and pays or causes to be paid any and all expenses, including reasonable attorneys' fees, court costs, and disbursements, incurred by Lessor concerning the Leased Premises and Improvements in connection with any such termination or in connection with the execution and delivery of such new lease and any conveyance of title to the Improvements; and

(iii) Leasehold Mortgagee agrees to cure, within fifteen (15) days after the execution and delivery of such new lease, all uncured Events of Default of which Lessor shall have given Leasehold Mortgagee notice (except any Event of Default which is not capable of being cured by Leasehold Mortgagee, even if

possession of the Leased Premises, or the Improvements were obtained, to the extent that same shall have occurred prior to the execution and delivery of such new lease, shall be deemed to have been waived), or if any such Event of Default cannot be cured within such period, Leasehold Mortgagee agrees to commence, within such period, to cure such Event of Default and thereafter pursues the same with due diligence.

(b) Any new lease made pursuant to this subsection 16.3.3 shall (i) have the same relative priority in time and in right as this Lease Agreement, and (ii) have the benefit of all of the right, title, powers and privileges of Lessee hereunder in and to the Leased Premises and the Improvements. At Lessee's request, Lessor will enter into an agreement with Leasehold Mortgagee granting to Leasehold Mortgagee the rights set forth in this Section 16.3.

16.3.4. Notice to Lessor and Leasehold Mortgagee. If Lessee shall furnish Lessor with a written notice setting forth the name and address of a Leasehold Mortgagee, Lessor shall thereafter send to such Leasehold Mortgagee a copy of any notice given to Lessee under this Lease Agreement, and no such notice shall be deemed to have been properly given unless and until a copy thereof shall have been sent to Leasehold Mortgagee at the address specified in such notice.

16.3.5. Performance by Leasehold Mortgagee. No Leasehold Mortgagee shall have any liability for the performance of any of the covenants, conditions or obligations of Lessee under this Lease Agreement unless and until such time as Leasehold Mortgagee acquires title to the leasehold estate created by this Lease Agreement.

16.4 Non-subordination . Nothing contained in this Section 16 or in any other section of this Lease Agreement shall be deemed to allow a subordination of Lessor's title in any part or portion of the Leased Premises leased to Lessee. In no event will such subordination be made. Lessee and each Subtenant may mortgage only its leasehold or sub-leasehold interest in the Leased Premises.

16.5. Leasehold Mortgagee's Rights Agreements. Lessor covenants and agrees with Lessee that Lessor shall, at the request of Lessee made from time to time and at any time, enter into a lender's rights agreement with any Leasehold Mortgagee (or potential Leasehold Mortgagee) identified by Lessee, which lender's rights agreement shall be consistent with the terms and provisions contained in this Section 16 that apply to Leasehold Mortgagees and Leasehold Mortgages. Within thirty (30) days of Lessee's request for a lender's rights agreement pursuant to the provisions of this Section 16.5, time being of the essence, Lessor, acting through the Authorized Officer of Lessor, shall execute and deliver to Lessee such a lender's right agreement benefitting the identified Leasehold Mortgagee (or potential Leasehold

Mortgagee) and such Leasehold Mortgagee's Leasehold Mortgage (or potential Leasehold Mortgagee's potential Leasehold Mortgage), which executed lender's rights agreement shall be in a form and substance that are reasonably acceptable to such Leasehold Mortgagee (or potential Leasehold Mortgagee) and that is consistent with, and at the option of such Leasehold Mortgagee (or potential Leasehold Mortgagee) incorporates, the terms and provisions of this Section 16 that apply to Leasehold Mortgagees and Leasehold Mortgages (such as the Leasehold Mortgagee notice provisions and the Leasehold Mortgagee cure rights provisions of this Section 16).

16.6. **Modifications to this Lease Agreement.** In the event that in connection with the closing of a Leasehold Mortgage, the Leasehold Mortgagee requires that this Lease Agreement be modified or amended in order to meet such Leasehold Mortgagee's commercially reasonable requirements, provided that the Term and Rent are not modified, Lessor, within fifteen (15) days of the date that Lessee provides Lessor with a proposed amendment to this Lease Agreement that incorporates such commercially reasonable requirements, time being of the essence, shall execute and deliver to Lessee such amendment, provided such amendment is in a form and substance that is reasonably satisfactory to Lessor. Lessee shall have the right to cause such amendment to be recorded among the Land Records.

17. **Defaults/Litigation.**

17.1 **Lessor Default.**

17.1.1 **Default.** The term "event of Default of Lessor" shall apply upon the occurrence of any one of the following defaults by Lessor which is not cured within the time specified as to each:

(a) The failure of Lessor to timely execute and deliver to Lessee any document, agreement or instrument, such as a permit application, subdivision plan, estoppel certificate, lender rights agreement, attornment and non-disturbance agreement or amendment to this Lease Agreement that Lessor is obligated to execute and deliver to Lessee, which failure continues for thirty (30) days after Lessee provided Lessor with written notice of such failure;

(b) Except as otherwise provided in this Section 17.1.1, the material failure of Lessor to perform, observe, or comply with any covenant, term, or condition of this Lease Agreement to be performed, observed, or complied with by Lessor, including the creation of any Encumbrance from and after the Effective Date, which failure is not cured within ninety (90) days after written notice is given to Lessor (which notice shall specify the respects in which Lessee contends that Lessor has failed to perform any such covenant, term, or condition); provided, however, that if such default is not reasonably subject to cure within such period, and Lessor within such ninety (90) day period shall have commenced and shall continue diligently to prosecute all action necessary to cure such default after such notice, such failure shall not constitute an "Event of Default by Lessor";

(c) The material failure of Lessor to complete the Lessor's Work in accordance with the provisions of Section 3.3 hereof;

(d) An event of material default occurring under the Performance Based Grant Agreement; and

(e) An event of material default occurring under the Parking Agreement.

17.1.2 Lessee's Remedies for Event of Default by Lessor. If an Event of Default by Lessor shall occur, Lessee, to the fullest extent permitted by law, shall have the right to pursue any or all of the following remedies:

(a) The right and option to terminate this Lease Agreement by giving notice of such election to Lessor whereupon this Lease Agreement and the Term shall terminate as of the date of such notice and to pursue a damage claim against Lessor for all damages incurred by Lessee;

(b) The right and option to suspend all obligations concerning the construction and completion of the Project until such Event of Default of Lessor is cured or the curing of such Event of Default of Lessor is waived by Lessee (all deadlines contained herein shall be extended by the number of days contained in the period that commences on the date such Event of Default by Lessor has occurred and that terminates on the date such Event of Default by Lessor is cured or the curing of such Event of Default is waived by Lessee);

(c) The right to cure any Event of Default of Lessor relating to any Lessor obligation, upon at least thirty (30) days prior written notice to Lessor of Lessee's intent to exercise a right of self-help, at Lessor's cost and expense, and to be immediately (*i.e.*, within ten (10) days of the date that Lessee provides Lessor with a reasonably detailed invoice therefore) reimbursed by Lessor for all costs and expenses incurred by Lessee in so doing, with interest, from the date of such invoice until paid, at the Default Rate;

(d) The right to a writ of mandamus, injunction, or other similar relief, as may be available to it under applicable law, against Lessor (including any or all of the members of its governing body, and its officials, agents, or representatives); and/or

(e) The right to maintain any and all actions at law or suits in equity or other proceedings to enforce the curing or remedying of such default or for damages resulting from such default.

17.2 Lessee Default .

17.2.1 Default. Upon the occurrence of any one of the following defaults by Lessee which is not cured within the time specified as to each (the term “**Event of Default of Lessee**” shall apply to such occurrences after the expiration of any permitted cure periods):

(a) Subject to the provisions of Section 19.1 hereof, failure of Lessee to perform, observe, or comply with any material covenant, term, or condition of this Lease Agreement to be performed, observed, or complied with by Lessee, which is not cured within ninety (90) days after written notice thereof; provided, however, that if such default is not reasonably subject to cure within such period, Lessee commences the cure of such default and thereafter, diligently prosecutes such cure, an Event of Default shall not be deemed to occur;

(b) failure of Lessee to cause Substantially Completion to occur in accordance with the provisions of Section 5.1.1.2 hereof; and

(c) the filing by Lessee of a petition commencing a voluntary proceeding under the Federal Bankruptcy Code or any other federal, state, or local law or statute pertaining to bankruptcy or insolvency; a general assignment by Lessee for the benefit of creditors (excluding a Leasehold Mortgage in accordance with Section 16 hereof); an admission in writing by Lessee of its inability to pay debts as they become due; the filing by Lessee of any petition or answer in any proceeding seeking for itself, or consenting to, or acquiescing in, any insolvency, receivership, composition, readjustment, liquidation, dissolution, or other relief under any present or future statute, law, or regulation, pertaining to bankruptcy or insolvency or the filing by Lessee of an answer or other pleading admitting or failing to deny, or to contest, the material allegations of the petition filed against it in any such proceeding; the seeking or consenting to, or acquiescence by Lessee in, the appointment of any custodian, trustee, receiver, or liquidator of it, or any part of its property; or the commencement against Lessee of an involuntary proceeding under the Bankruptcy Code, or a proceeding under any receivership, composition, readjustment, liquidation, insolvency, dissolution, or like law or statute pertaining to insolvency, which case or proceeding is not dismissed or vacated within sixty (60) days; and

Notwithstanding anything in the foregoing to the contrary, any immaterial violation of any particular applicable law shall not constitute a failure of Lessee to perform, observe, or comply with any material covenant, term or condition of this Lease Agreement. This provision, however, shall not be deemed to affect or limit the right or power of Lessor (or any governmental entity) to enforce any applicable law.

17.2.2 Lessor's Remedies for Event of Default by Lessee. If an Event of Default of Lessee shall occur, Lessor, to the fullest extent permitted by law, shall have the right to pursue any or all of the following remedies:

(a) Subject to Section 16, the Lessor may immediately terminate all rights of Lessee in and to this Lease Agreement; and

(b) The Lessor may exercise any and all other remedies available to it at law or in equity.

17.3 **Lessor's Right to Institute Proceedings** . In the case of a material Event of Default by Lessee, subject to Section 16 hereof, Lessor shall have the right to institute such actions or proceedings it may deem desirable for effectuating the purposes of this Section, including without limitation the right to execute and record among the Land Records a written declaration of the termination of all rights and title of Lessee, its successors and assigns, in the Leased Premises and the reversioning of the leasehold title thereof in Lessor, subject to mortgage liens upon any continuing leasehold interest effectuated by Section 16 hereof and as provided for above; provided, however, that any delay by Lessor in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section, shall not operate as a waiver of its rights, or deprive it of any such rights in any way, it being the intention hereof that Lessor should not be constrained (so as to avoid the risk or otherwise) to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved; nor shall any waiver in fact made by Lessor with respect to any specific default by Lessee under this Section 17 be considered or treated as a waiver of the rights of Lessor with respect to the particular default except to the extent specifically waived.

17.4 **Cumulative Remedies** . Except as expressly limited by this Lease Agreement, the specified remedies to which Lessor or Lessee may resort under this Section are cumulative and are in addition to, and not in lieu of, all other remedies to which Lessor or Lessee may be lawfully entitled at law or in equity in case of any default or threatened default by Lessor or Lessee of any provision of this Lease Agreement. The initiation of any remedy by Lessor or Lessee shall not constitute or be deemed an election of remedies by it and such party may invoke two or more remedies hereunder concurrently or consecutively.

17.5 **Waiver**. Failure of Lessor or Lessee to exercise any right or remedy hereunder shall not impair any of its rights nor be deemed a waiver thereof and no waiver of any of its rights shall be deemed to apply to any other such rights, nor shall it be effective unless in writing and signed by the waiving party.

17.6 **Attorneys Fees** . In any judicial proceedings between Lessor and Lessee in connection with the Project or this Lease Agreement, the prevailing party shall be entitled to reimbursement of its reasonable attorney's fees.

17.7 **Waiver of Jury Trial**. Lessor and Lessee do hereby waive trial by jury in any action, suit, proceeding, and/or counterclaim brought by either of the parties hereto against

the other on any matters whatsoever arising out of or in any way connected with this Lease Agreement any claim of injury or damage, and/or statutory remedy.

17.8 Litigation.

The Lessor and Lessee consent to the diversity jurisdiction of the federal courts and both agree to not seek to remove from the federal court. In the event that diversity jurisdiction ends or the federal court otherwise declines to hear a dispute arising under this Lease Agreement, the Lessor and Lessee agree to the state courts in Richmond, Virginia as the appropriate venue.

18. Representations.

18.1 Representations by Lessee . Lessee, as of the date of this Lease Agreement, makes the following representations and warranties, as the basis for the undertakings on Lessor's part herein contained:

18.1.1 Lessee is a duly organized and validly existing limited liability company under the laws of Maryland and has the power and authority to own its properties and other assets and to transact the business in which it is now engaged or proposed to engage. Lessee is duly qualified or licensed as a foreign entity in each jurisdiction in which the nature of the business it is engaged, or the character of the properties owned by it, makes such qualification or licensing necessary, including Virginia.

18.1.2 Lessee has the power and authority to execute, deliver and carry out the terms and provisions of this Lease Agreement and all other instruments to be executed and delivered by Lessee in connection with its obligations hereunder. The execution, delivery and performance by Lessee of this Lease Agreement have been duly authorized by all requisite action by Lessee, and this Lease Agreement is a valid and binding obligation of Lessee enforceable in accordance with its respective terms, except as may be affected by applicable bankruptcy or insolvency laws affecting creditors' rights generally.

18.1.3 Lessee is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any evidence of indebtedness of Lessee or contained in any instrument under or pursuant to which any such evidence of indebtedness has been issued or made and delivered. Neither the execution and delivery of this Lease Agreement, nor the consummation of the transactions herein contemplated, will conflict with or result in a breach of any of the terms, conditions or provisions of the Articles of Organization of Lessee or of any agreement or instrument to which Lessee is now a party or otherwise bound or to which any of its properties or other assets is subject, or of any order or decree of any court or governmental instrumentality, or of any arbitration award, franchise or permit, or constitute a default thereunder, or, except as contemplated hereby, result

in the creation or imposition of any lien or other encumbrance upon any of the properties or other assets of Lessee.

18.1.4 There are no actions, suits, investigations or proceedings (whether or not purportedly on behalf of Lessee) pending or, to the knowledge of Lessee, threatened against or affecting Lessee or the Project, or any other of the assets or properties of Lessee at law or in equity or before or by a governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, or before an arbitrator of any kind, which involve the possibility of liability in excess of \$100,000 or of any material adverse effect on the business operations, prospects, properties or other assets or in the condition, financial or otherwise, of Lessee, or of the Project, and Lessee is not in default with respect to any judgment, order, writ, injunction, decree, award, rule or regulation of any court, arbitrator or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign.

18.1.5 To its best knowledge, Lessee is not a party to or otherwise bound by any agreement or instrument or subject to any other restriction or any judgment, order, writ, injunction, decree, award, rule or regulation which materially and adversely affect the business, operations, prospects, properties or other assets, or the condition, financial or otherwise, of Lessee or of the Project. Lessee has received no notice of, and to its best knowledge, is not in default (a) under any obligation for borrowed money, or (b) in the performance, observance or fulfillment or any of the obligations, covenants or conditions contained in any other agreement or instrument to which it is a party, by which it is otherwise bound or to which any of its property or the Project is subject.

18.1.6 To Lessee's best knowledge, neither this Lease Agreement nor any document, certificate or financial statement furnished to Lessor by or on behalf of Lessee in connection herewith, contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements contained herein and therein not misleading. There is no fact known to Lessee which materially adversely affects or in the future may (so far as it is now known to Lessee) have a material adverse effect upon the business, operations, prospects, property, other assets or financial condition of Lessee or of the Project which has not been set forth in this Lease Agreement or in other documents, certificates and financial statements furnished to Lessor or on behalf of Lessee in connection with the transactions contemplated hereby.

18.2 **Representations by Lessor.** Lessor, as of the date of this Lease Agreement, makes the following representations and warranties, as the basis for the undertakings on Lessee's part herein contained:

18.2.1 Lessor is a limited partnership, duly organized and validly existing under the constitution and laws of the State of Maryland, with full legal right, power, and authority to enter into and perform its obligations under this Lease Agreement.

18.2.2 Lessor has the power and authority to execute, deliver and carry out the terms and provisions of this Lease Agreement and all other instruments to be executed and delivered by Lessor in connection with its obligations hereunder. The execution, delivery and performance by Lessor of this Lease Agreement have been duly authorized by all requisite action by Lessor, and this Lease Agreement is a valid and binding obligation of Lessor enforceable in accordance with its respective terms, except as may be affected by applicable bankruptcy or insolvency laws affecting creditors' rights generally.

18.2.3 Lessor is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any evidence of indebtedness of Lessor or contained in any instrument under or pursuant to which any such evidence of indebtedness has been issued or made and delivered. Neither the execution and delivery of this Lease Agreement, nor the consummation of the transactions herein contemplated, will conflict with or result in a breach of any of the terms, conditions or provisions of the partnership agreement creating the Lessor or of any agreement or instrument to which Lessor is now a party or otherwise bound or to which any of its properties or other assets is subject, or of any order or decree of any court or governmental instrumentality, or of any arbitration award, franchise or permit, or constitute a default thereunder, or, except as contemplated hereby, result in the creation or imposition of any lien or other encumbrance upon any of the properties or other assets of Lessor.

18.2.4 Except for claims from Bar Norfolk and Have a Nice Day Café ("BAR Claims"), there are no actions, suits, investigations or proceedings (whether or not purportedly on behalf of Lessor) pending or, to the knowledge of Lessor, threatened against or affecting Lessor, the Leased Premises or the Project, or any other of the assets or properties of Lessor at law or in equity or before or by a governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, or before an arbitrator of any kind, which involve the possibility of liability in excess of \$100,000 or of any material adverse effect on the business operations, prospects, properties or other assets or in the condition, financial or otherwise, of Lessor, or of Leased Premises or the Project, and Lessor is not in default with respect to any judgment, order, writ, injunction, decree, award, rule or regulation of any court, arbitrator or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign.

18.2.5 To its best knowledge, Lessor is not a party to or otherwise bound by any agreement or instrument or subject to any other restriction or any judgment, order, writ, injunction, decree, award, rule or regulation which materially and adversely affect the business, operations, prospects, properties or other assets, or the condition, financial or otherwise, of Lessor or of the Project. Lessor has received no notice of, and to its best knowledge, is not in default (a) under any obligation for borrowed money, or (b) in the performance, observance or fulfillment or any of the obligations, covenants or conditions contained in any other agreement or instrument to which it is a party, by which it is otherwise bound or to which any of its property or the Project is subject.

18.2.6 To Lessor's best knowledge, neither this Lease Agreement nor any document, certificate or financial statement furnished to Lessor by or on behalf of Lessor in connection herewith, contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements contained herein and therein not misleading. There is no fact known to Lessor which materially adversely affects or in the future may (so far as it is now known to Lessor) have a material adverse effect upon the business, operations, prospects, property, other assets or financial condition of Lessor or of the Project which has not been set forth in this Lease Agreement or in other documents, certificates and financial statements furnished to Lessor or on behalf of Lessor in connection with the transactions contemplated hereby.

18.2.7. Except for claims from Bar Norfolk and Have a Nice Day Café during the period that commenced on the date that is three (3) years prior to the Effective Date and that ends on the Effective Date, except as set forth in Exhibit "O", there have been and are no claims, actions, suits, arbitration's, proceedings or investigations pending before any governmental authority or, to the best knowledge of Lessor, threatened in writing against Lessor and/or the Leased Premises relating to the Leased Premises.

18.2.8 To Lessor's best knowledge, except as and to the extent set forth in Exhibit "P", Lessor has not received any written notice of any failure to comply, in any material way, with any applicable law which has not been corrected.

18.2.9 Except as set forth on Exhibit "Q", Lessor has not received during the last three (3) years: (i) building code violation notices (other than notices of violations which have been removed or corrected); or (ii) notices of any action or governmental proceeding in eminent domain, or for a zoning change, or affecting the environmental (including wetlands) condition of the Property.

18.2.10 Except as set forth on Exhibit "R" hereof: (a) there are no management, leasing services or employment contracts affecting the Leased Premises that will be in effect on the Delivery of Possession Date; and (b) to Lessor's best knowledge there are no maintenance, advertising or service contracts affecting the Leased Premises that will be in effect on the Delivery of Possession Date.

18.2.11. There are no leases, licenses or rental agreements affecting the Leased Premises other than the leases described on Exhibit "S", copies of which have been supplied to Lessee (the "Leases"). Except for matters disclosed in the Tenant Estoppel Certificates delivered to Lessee by Lessor as part of Lessor's Work and/or routine tenants matters which have been settled, dismissed, or as set forth in Exhibit "O", Lessor has not received any written claim during the last three (3) years from any tenant under the Leases alleging any type of default by the landlord under the Leases or demanding any work or payment from landlord that has not been resolved. All leasing commissions, and tenant improvement

allowances arising in connection with any Lease entered into prior to the Effective Date shall be fully-paid, discharged or credited to Lessee by Lessor on the Delivery of Possession Date.

18.3 **Opinion of Counsel.** Upon the Effective Date, Lessor and the City of Norfolk shall furnish to Lessee an opinion of counsel, in form and substance substantially as Exhibit Y, as to the taking of all necessary action in connection with this Lease Agreement and each of its Exhibits attesting to the enforceability of this Lease Agreement and each of the agreements in its Exhibits.

19. **Miscellaneous Provisions.**

19.1 **Force Majeure.** For the purpose of any of the provisions of this Lease Agreement, neither Lessor, nor Lessee, as the case may be, nor any successor in interest, shall be considered in breach of or default in any of its obligations, including, but not limited to, the beginning and completion of construction, or progress in respect thereto, in the event of enforced delay in the performance of such obligations due to causes beyond its control, including but not restricted to, strikes, lockouts, actions of labor unions, riots, storms, floods, explosions, acts of God or of the public enemy, acts of government, insurrection, mob violence, civil commotion, sabotage, malicious mischief, vandalism, inability (notwithstanding good faith and diligent efforts) to procure, or general shortage of, labor, equipment, facilities, materials, or supplies in the open market, defaults of independent contractors or subcontractors (provided that remedies are being diligently pursued against the same), failures of transportation, fires, other casualties, epidemics, quarantine restrictions, freight embargoes, severe weather, inability (notwithstanding good faith and diligent efforts) to obtain governmental permits or approvals, or delays of subcontractors due to such causes, it being the purpose and intent of this Section 19.1 that in the event of the occurrence of any such enforced delays, the time or times for the performance of the covenants, provisions, and agreements of this Lease Agreement shall be extended for the period of the enforced delay (including any time reasonably required to recommence performance due to such enforced delay). The affected party shall use reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its agreements; and provided further, that the settlement of strikes, lockouts, and other industrial disturbances shall be entirely within the discretion of the affected party, and the affected party shall not be required to make settlement of strikes, lockouts, and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of the affected party, unfavorable to the affected party. Notwithstanding the above, (a) Lessee may not rely on its own acts or omissions as grounds for delay in its performance, provided that Lessor recognizes that certain acts of Subtenants may be grounds for delay, (b) Lessor may not rely on its own acts or omissions or the acts or omissions of the City of Norfolk, Virginia as grounds for delay in its performance, and (c) the absence of immediately available funds shall not be grounds for delay.

19.2 **Estoppel Certificates.** Lessor and Lessee, at any time and from time to time, upon not less than thirty (30) days prior written notice from a party hereto, or to a person

designated by such party, such as a tenant or a mortgagee or lender of Lessee, shall execute, acknowledge, and deliver to the party requesting such statement, a statement in reasonably acceptable form to the requesting party certifying, among other matters, (a) that this Lease Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (b) stating whether or not, to the best knowledge of the signer of such certificate, Lessor or Lessee is in breach and/or default in performance of any covenant, agreement, or condition contained in this Lease Agreement and, if so, specifying each such breach and/or default of which the signer may have knowledge, and (c) any other factual matters reasonably requested in such estoppel certificate, it being intended that any such statement delivered hereunder may be relied upon by the party requesting such statement and/or any person not a party to this Lease Agreement (if such other person is identified at the time such certificate was requested).

19.3 **Lessor's Rights of Access.** Subject to the rights of each Subtenant under its applicable Sublease, Lessee agrees that Lessor and Lessor's duly authorized agents shall have the right at all reasonable times during normal business hours and following reasonable prior notice (except that no notice shall be required in the event of an emergency) to enter upon the Leased Premises and the Improvements and to examine and inspect the same.

19.4 **Notices.** A notice, communication, or request under this Lease Agreement by Lessor to Lessee or by Lessee to Lessee shall be sufficiently given or delivered if dispatched by either (a) certified mail, postage prepaid, return receipt requested, (b) nationally recognized overnight delivery service (next business day service), or (c) hand-delivery (if receipt is evidenced by a signature of the addressee or authorized agent), and addressed to the applicable parties as follows:

19.4.1 **Notice to Lessor.** Each Notice to Lessor shall be addressed as follows:

Norfolk Redevelopment and Housing Authority
201 Granby Street
Norfolk, VA 23510
Attn: Executive Director

and a copy to : City Manager
City of Norfolk
1100 City Hall Bldg
810 Union Street
Norfolk, VA 23510

and to: Norfolk City Attorney

900 City Hall Bldg.
810 Union Street
Norfolk, VA 23510

19.4.2 **Notice to Lessee.** Each Notice to Lessee shall be addressed as follows:

Norfolk District Associates, LLC
601 East Pratt Street, 6th Floor
Baltimore, Maryland 21202
Attention: President

with a copy to:

Norfolk District Associates, LLC
601 East Pratt Street, 6th Floor
Baltimore, Maryland 21202
Attention: General Counsel

Any notice, communication, or request so sent shall be deemed to have been "given" (a) as of the next business day after being sent, if sent by nationally recognized express mail service, (b) as of the fifth business days after being sent, if sent by Registered or Certified U.S. Mail or (c) upon receipt, if sent by hand delivery. Either party may change its address for notice purposes by giving notice thereof to the other parties, except that such change of address notice shall not be deemed to have been given until actually received by the addressee thereof.

19.5 **Fees and Commissions.** Lessor and Lessee each represents to the other that there are no claims for brokerage or other commissions or finder's or other similar fees in connection with the transactions contemplated by this Lease Agreement insofar as such claims shall be based on arrangements or agreements made by or on behalf of the Party so representing.

19.6 **Waiver.** No consent or waiver, express or implied, by Lessor or Lessee to or of any breach or default by the other Party in the performance by such other Party of the obligations thereof under this Lease Agreement shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other Party of the same or any other obligations of such other Party under this Lease Agreement. Failure on the part of either Lessor or Lessee to complain of any act or failure to act of the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver of such Party of the rights thereof under this Lease Agreement.

19.7 **Severability.** If any provision of this Lease Agreement or the application thereof to any Entity or circumstance shall be invalid or unenforceable to any extent, the remainder of this Lease Agreement and the application of such provisions to any other Entity or

circumstance shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

19.8 **Status Reports.** Recognizing that Lessor and Lessee may find it necessary from time to time to establish to other Entities such as accountants, banks, mortgagees or the like, the then current status of performance hereunder, Lessor and Lessee each agree, upon the written request of the other Party, made from time to time by Notice, to furnish promptly a written statement (in recordable form, if requested) on the status of any matter pertaining to this Lease Agreement to the best of the knowledge and belief of the Party making such statement.

19.9. **Amendment.** Neither this Lease Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the Party against whom enforcement of the change, waiver, discharge or termination is sought.

19.10 **Terminology.** All personal pronouns used in this Lease Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural; and the plural shall include the singular. Unless otherwise expressly stated, titles of Sections, Subsections and Paragraphs of this Lease Agreement are for convenience only, and neither limit nor amplify the provisions of this Lease Agreement, and all references in this Lease Agreement of Sections, Subsections or Paragraphs shall refer to the corresponding Section, Subsection or Paragraph of this Lease Agreement unless specific reference is made to the articles, sections or subdivisions of another document or instrument.

19.11 **Counterparts.** This Lease Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single instrument.

19.12 **Binding Agreement.** Subject to the restrictions on Dispositions set forth herein, this Lease Agreement shall inure to the benefit of and be binding upon Lessor and Lessee and their respective heirs, executors, legal representatives, successors and assigns. Whenever in this Lease Agreement a reference to Lessor, Lessee or any Entity is made, such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors and assigns of Lessor, Lessee or such Entity.

19.13 **Interpretation.** No provision of this Lease Agreement shall be construed against or interpreted to the disadvantage of either Lessor or Lessee by any court or other governmental or judicial authority by reason of such Party having or being deemed to have structured or dictated such provision.

19.14 **Governing Law.** This Lease Agreement and the obligations of Lessor and Lessee hereunder shall be interpreted, construed and enforced in accordance with the Laws of the Commonwealth of Virginia.

19.15 **Relationship of Parties.** No express or implied term, provision or condition of this Lease Agreement shall or shall be deemed to constitute Lessor and Lessee as partners or joint venturers.

19.16 **Minority and Norfolk Resident Job Opportunities:** Lessee shall make reasonable efforts to include provisions in the construction contract for the Lessee's Work, and in the Subleases of space in the Project, to obligate the contractor and the Subtenants to make a good faith effort to cause the employment opportunities at the Project are made available to Norfolk residents, especially low and moderate income persons; and prohibiting any contractor or Subtenant from discriminating on the basis of race, color, creed, national origin, age or sex. Lessee shall reasonably cooperate with the Lessor or the City of Norfolk in alerting the contractors and Subtenants to any training or other job opportunity programs.

19.17 **Limitation of Liability.** The term "Lessor" as used in this Lease Agreement so far as covenants or obligations on the part of Lessor are concerned shall be limited to mean and include only the owners at the time in question of the fee title to the Leased Premises, and in the event of any transfer or transfers of the title to the Fee, Lessor herein named (and in case of any subsequent transfers or conveyances the then grantor) shall be automatically relieved from and after the date of such transfer or conveyance of all personal liability as respects the performance of any covenants or obligations on the part of Lessor contained in this Lease Agreement thereafter to be performed; provided that, any funds in the hands of such Lessor or the then grantor at the time of such transfer, in which Lessee has an interest, shall be turned over to the grantee and any liquidated amount then due and payable to Lessee by Lessor or the then grantor under any provision of this Lease Agreement, shall be paid to Lessee, it being intended hereby that the covenants and obligations contained in this Lease Agreement on the part of Lessor shall, subject as aforesaid, be binding on Lessor, its successors and assigns, only during and in respect of their respective successive periods of ownership.

19.18 **Representatives Not Individually Liable.** No member, official, representative, or employee of Lessor shall be personally liable to Lessee or any successor in interest in the event of any default or breach by Lessor for any amount which may become due to Lessee or successor or on any obligations under the terms of this Lease Agreement. No partner, member, representative, or employee of Lessee or any of its members shall be personally liable to Lessor in the event any default or breach by Lessee for any amount which may become due to Lessor or on any obligations under the terms of this Lease Agreement.

19.19 **Entire Agreement.** This Lease Agreement, the Performance Based Grant Agreement and the Parking Agreement incorporate all prior negotiations and discussions between the parties regarding the subject matter and represent the entire agreement of Lessor and Lessee for the Project.

19.20 **Third Party Beneficiary.** Except as otherwise provided in Subsection 15.2.1 hereof, nothing contained in this Lease Agreement shall be construed to confer upon any other party the rights of a third party beneficiary.

19.21 **Payment or Performance on Saturday, Sunday, or Holiday.** Whenever the provisions of this Lease Agreement call for any payment or the performance of any act on or by a date that is not a Business Day, including the expiration date of any cure periods provided herein, then such payment or such performance shall be required on or by the immediately succeeding Business Day.

19.22 **Incorporation into Agreement.** All exhibits, schedules, and recitals form a part of this Lease Agreement.

19.23 **Applicable Laws.** Nothing in this Lease Agreement shall be construed to (a) limit or prevent Lessee from challenging at law or in equity the applicability of any applicable law or the denial or revocation of any Government Approvals and/or pursuing its rights in furtherance thereof through appropriate judicial proceedings or (b) constitute a waiver of due process. Notwithstanding anything to the contrary contained in this Lease Agreement, no provision of this Lease Agreement shall be construed to require Lessee to comply with any applicable law during the period that Lessee may be pursuing a bona fide challenge of the applicability, lawfulness, and/or enforceability of such applicable law (unless such law requires compliance during any such challenge). If Lessee's challenge is successful, Lessee shall not be required by the provisions of this Lease Agreement to comply with such applicable law.

19.24 **Time of the Essence.** Time is of the essence in the performance of the obligations of Lessor and Lessee under this Lease Agreement.

19.25 **Confidentiality of the Lessee's Information.** Lessor acknowledges that any information provided by the Lessee to the Lessor concerning the cost of the Lessee's Work, the terms of any financing of the Project, the identity of any potential Subtenant, the terms of any Sublease and/or the actual sales of any Subtenant at the Project shall constitute "confidential financial information" and may contain "trade secrets" and "confidential information". Accordingly, the Lessor, to the fullest extent permitted by applicable law, shall deny public inspection of such information. This Section 19.25 shall not limit, however, the exercise of the Lessor's rights in any legal proceeding, provided that the Lessor then requests the court to maintain such information as confidential.

19.26 **Recordation.** Either party will, at any time upon fifteen (15) business days prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum or Short Form of Lease. Either party may record this Memorandum or Short Form of Lease at any time, in its absolute discretion.

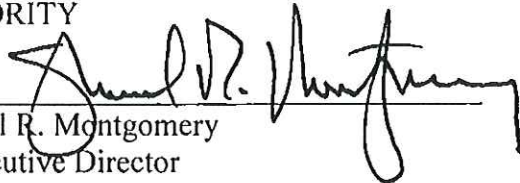
19.27 **Deed of Lease**. For purposes of Virginia law, this Lease Agreement is a Deed of Lease.

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SIGNATURE PAGE FOLLOWS


IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease Agreement under seal, the day and year first above written.

LESSOR:

NORFOLK REDEVELOPMENT AND HOUSING
AUTHORITY

By: 
Shurl R. Montgomery
Executive Director

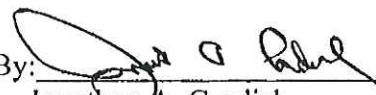
APPROVED AS TO FORM:


Counsel to the Norfolk Redevelopment
And Housing Authority

LESSEE:

NORFOLK DISTRICT ASSOCIATES, LLC, a
Maryland limited liability company,

By: Cordish Enterprises, LLLP, its Managing
Member

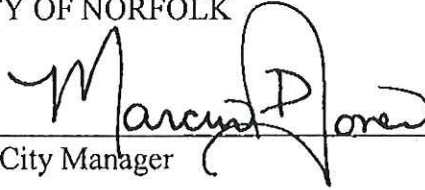
By: 
Jonathan A. Cordish
General Partner

The City of Norfolk executes this Deed of Lease and Development Agreement for the limited purpose of acknowledging its rights and guarantying its obligations under Sections: 2.6, 5.4, 5.10, 7.3, 7.4, 8.1, 8.2, 9.1, 9.2, 9.3, 9.4, 10.2, 10.3, 10.7, 11.1, 11.4 and 19.4. hereunder.

CITY OF NORFOLK

By:

City Manager



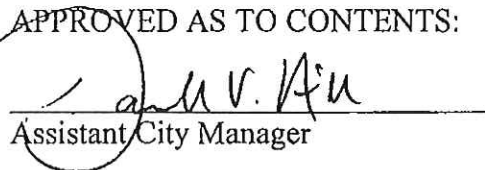
Attest:

City Clerk



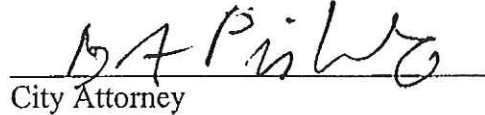
APPROVED AS TO CONTENTS:

Assistant City Manager



APPROVED AS TO FORM & CORRECTNESS:

City Attorney



Waterside

An irregular-shaped lot, piece or parcel of land situate, lying and being in the City of Norfolk, Virginia, said parcel being further described as follows: BEGINNING at a point that is the intersection of the western line of Atlantic Street and the southern line of Waterside Drive, said point being shown on a plat entitled, "Resubdivision of Parcels R-1 and R-2 and City of Norfolk Pump Station Site Plat of The Waterside, Property of Norfolk Redevelopment & Housing Authority," said plat being duly recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia, in Map Book 45 at Page 123A; thence, from the point of beginning thus described, 34.83 feet, more or less, along the arc of a curve to the right, the radius of which is 46.00 feet, with a chord distance of 34.00 feet, more or less, and a chord bearing of S 21°-17'-41" E, to a point of tangency; thence, the following four courses and distances across the right-of-way of Atlantic Street: 45.46 feet, more or less, along the arc of a curve to the left, the radius of which is 66.00 feet, with a chord distance of 44.57 feet, more or less, and a chord bearing of S 34°-27'-09" E to a point of reverse curvature; thence, 40.15 feet, more or less, along the arc of a curve to the right, the radius of which is 66.00 feet, with a chord distance of 39.53 feet, more or less, and a chord bearing of S 36°-45'-28" E to a point of compound curvature; thence, 19.18 feet, more or less, along the arc of a curve to the right, the radius of which is 30.00 feet, with a chord distance of 18.85 feet, more or less, and a chord bearing of S 7°-49'-48" W to a point of compound curvature; thence, 21.49 feet, more or less, along the arc of a curve to the right, the radius of which is 15.00 feet, with a chord distance of 19.70 feet, more or less, and a chord bearing of S 69°-55'-11" W to a point; thence, S 20°-56'-21" W, 59.86 feet, more or less to a point on the western line of Atlantic Street; thence, S 18°-48' 18" W, 174.57 feet, more or less, to a point on the southern edge of a 2.5 foot concrete strip; thence, westwardly along the following three courses and distances along said southern line of said concrete strip: N 71°-13'-28" W, 141.79 feet, more or less, to a point; thence, N 64°-30'-12" W, 99.41 feet, more or less, to a point; thence, N 19°-17'-19" W, 33.23 feet, more or less, to a point; thence, N 64°-49'-48" W, 168.68 feet, more or less, across a brick promenade to a point on the southeastern line of a 2.5 foot concrete strip; thence, meandering southwestwardly and westwardly along said southeastern and southern lines of said concrete strip, S 71°-24'-09" W, 4.66 feet, more or less, to a point; thence, S 24°-44'-25" W, 5.65 feet, more or less, to a point; thence, S 70°-56'-05" W, 15.29 feet, more or less, to a point; thence, N 64°-41'-36" W, 94.66 feet, more or less, to a point; thence, S 70°-33'-14" W, 33.93 feet, more or less, to a point; thence, N 64°-24'-23" W, 57.34 feet, more or less, to a point; thence, N 25°-28'-49" E, 201.85 feet along a line that is 1.0 foot east of and parallel to the eastern line of a concrete walk to a point; thence, N 66°-47'-30" E, 127.30 feet, more or less, to a point on the southern line of Waterside Drive; thence, S 73°-48'47" E, 428.82 feet, more or less, along said southern line of Waterside Drive to the point of beginning.

The above-described parcel contains 4.09 acres of land, more or less.

July 29, 2013

0.03 ACRE TO BE DEDICATED
TO THE CITY OF NORFOLK FOR
RIGHT-OF-WAY AND
STREET PURPOSES

WATERSIDE DRIVE (VAR. WIDTH)

ATLANTIC STREET
(VAR. WIDTH)

PRELIMINARY

PRELIMINARY

LINE TABLE		
NO.	DIST.	BEARING
1	12.82	S00°23'41"W
2	27.48	N25°28'49"E
3	3.00	N88°36'18"W
4	12.82	N00°23'41"E
5	3.00	N47°00'59"E

NO.	RADIUS	DELTA	ARC	TAN	CHECKED	OK	BEARING
1	46.00'	4.72°	3.43'	18.50'	54.00'	1	S 87.17° E
2	46.00'	23.86°	20.18'	10.25'	20.00'	1	S 73.07° E
3	58.00'	53.07°	65.57'	36.43'	82.23'	1	S 20.20° E
4	100.00'	94.29°	99.98'	4.00'	8.00'	1	N 61.32° E
5	43.00'	94.29°	32.56'	17.10'	31.78'	1	N 61.32° E

VERMONT
IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF THE CITY OF NORFOLK, VERMONT,
ON THE _____ DAY OF _____, 20____, AT _____
THIS PLAN WAS THIS DAY RECEIVED, AND UPON CERTIFICATE OF ACKNOWLEDGEMENT,
THE PLAN WAS RECORDED IN MAP BOOK _____ PAGE _____
TESTE: GEORGE E. SCHWARTZ, CLERK BY _____ D.C.

RE-DESIGNING CREATING
PARCELS R-1-A, R-2-B AND R-3-C
AT THE WATERSE
NORFOLK, VERMONT



DRAWING SCALE 1"=50'
DATE 09-28-2013 SCALE DRAWN BY CHECKED BY
1"=50' RMC JTW

DIVISION OF SURVEYS
DEPARTMENT OF PUBLIC WORKS

DR-20
NORFOLK, VERMONT

SHEET 2 OF 2

Encumbrances

- (1) Amended and Restated Entranceway Participation and Maintenance Agreement dated August 31, 1989 and recorded in the Clerk's Office of the Circuit Court of the City of Norfolk in Deed Book 2206, page 224.
- (2) Existing easement to the City of Norfolk for pedestrian overpass and pile foundations (M.B. 41, P. 147) and as shown on the recorded plat of the subdivision, in Map Book 45, pages 123 & 123A.
- (3) Existing utility easements (Mil. 41 P. 147) and as shown on the recorded plat of the subdivision, in Map Book 45, pages 123 and 123A.
- (4) Existing subsurface easement (M.B. 41 P.147) and as shown on the recorded plat of the subdivision, in Map Book 45, pages 123 and 123A.
- (5) 
- (6) 
- (7) Deed of Reciprocal Easements by instrument recorded in the Clerk's Office of the Circuit Court of the City of Norfolk in Deed Book 2794, at page 64.
- (8) Deed of Easement to the City of Norfolk as recorded in the Clerk's Office of the Circuit Court of the City of Norfolk in Deed Book 2806, at page 562.

Existing Easements at Waterside

Easement for Pedestrian Overpass and Pile Foundations at Waterside

All that certain lot, piece or parcel of land situate, lying and being in the City of Norfolk, Virginia, said parcel being further described as follows: That parcel labeled, "Easement Note 1," on a plat entitled, "Plat of the Waterside, Property of Norfolk Redevelopment & Housing Authority," said plat being duly recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia, in Map Book 41 at Page 147, said note 1 stating, "Easement to City of Norfolk for Pedestrian Overpass and Pile Foundations."

August 26, 2013

Easement for Utilities at Waterside

All that certain lot, piece or parcel of land situate, lying and being in the City of Norfolk, Virginia, said parcel being further described as follows: That parcel labeled, "Easement Note 2," on a plat entitled, "Plat of the Waterside, Property of Norfolk Redevelopment & Housing Authority," said plat being duly recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia, in Map Book 41 at Page 147, said note 2 stating, "Easement for Utilities Including Sanitary Sewer, Water, Electrical, Lighting, Storm Drainage, Power and Telephone Lines and Structures Within Parcels R-1, R-2, R-5-A and R-5-B."

August 26, 2013

Easement for Sheet Pile Tie Back Wall and Tie Back Anchor Rods at Waterside

All that certain lot, piece or parcel of land situate, lying and being in the City of Norfolk, Virginia, said parcel being further described as follows: That parcel labeled, "Easement Note 3," on a plat entitled, "Plat of the Waterside, Property of Norfolk Redevelopment & Housing Authority," said plat being duly recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia, in Map Book 41 at Page 147, said note 3 stating, "Non-Exclusive Subsurface Easement to City of Norfolk for Sheet Pile Tie Back Wall and Tie Back Anchor Rods."

August 26, 2013

New Easements at Waterside

5' Utility Easement

All that certain lot, piece or parcel of land situate, lying and being in the City of Norfolk, Virginia, said parcel being further described as follows: COMMENCING at a point that is the southeastern corner of Parcel R-2-A, said parcel being shown on a plat entitled, "Resubdivision of Parcels R-1 and R-2 and City of Norfolk Pump Station Site, Plat of the Waterside, Property of Norfolk Redevelopment & Housing Authority, Norfolk, Virginia," said plat being duly recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia, in Map Book 45 at Page 123A; thence, from the point of commencement thus described, N 64°-27'-01" W, 39.27 feet, more or less, to the point of beginning; thence, from the point of beginning thus described, N 25°-28'-49" E, 199.16 feet, more or less, to a point; thence, N 66°-47'-30" E 7.57 feet, more or less, to a point; thence, S 25°-28'49" W, 207.55 feet, more or less, to a point; thence, N 64°-24'-23" W, 5.00 feet, more or less, to a point; thence, N 25°-28'-49" E, 2.69 feet, more or less, to the point of beginning.

August 29, 2013

20.00' Drainage Easement

All that certain lot, piece or parcel of land situate, lying and being in the City of Norfolk, Virginia, said parcel being further described as follows: COMMENCING at a point that is the southeastern corner of Parcel R-1-A, said parcel being shown on a plat entitled, "Resubdivision of Parcels R-1 and R-2 and City of Norfolk Pump Station Site, Plat of the Waterside, Property of Norfolk Redevelopment & Housing Authority, Norfolk, Virginia," said plat being duly recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia, in Map Book 45 at Page 123A; thence, from the point of commencement thus described, S 18°-48'-18" W, 9.23 feet, more or less, to a point; thence, N 71°-13'-28" W, 20.91 feet, more or less, to the point of BEGINNING; thence, from the point of beginning thus described, N 71°-13'-28" W, 20.00 feet, more or less, to a point; thence, N 18°-33'-10" E, 34.72 feet, more or less, to a point; thence, S 64°-14'-04" E, 20.16 feet, more or less, to a point; thence, S 18°-33'-10" W, 32.27 feet, more or less, to the point of beginning.

August 29, 2013

2.7' Utility Easement

All that certain lot, piece or parcel of land situate, lying and being in the City of Norfolk, Virginia, said parcel being further described as follows: BEGINNING at a point that is the southeastern corner of Parcel R-2-A, said parcel being shown on a plat entitled, "Resubdivision of Parcels R-1 and R-2 and City of Norfolk Pump Station Site, Plat of the Waterside, Property of Norfolk Redevelopment & Housing Authority, Norfolk, Virginia," said plat being duly recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia, in Map Book 45 at Page 123A; thence, from the point of beginning thus described, S 64°-24'-23" E, 16.95 feet, more or less, to a point; thence, N 70°-33'-14" E, 33.91 feet, more or less, to a point; thence, S 64°-41'-36" E, 94.65 feet, more or less, to a point; thence, N 70°-56'-05" E, 13.04 feet, to a point; thence, N 24°-44'-25" E, 5.66 feet, more or less, to a point; thence, N 71°-24'-09" W, 5.82 feet, more or less, to a point; thence, S 18°-35'-51" E, 2.70 feet, more or less, to a point; thence, S 71°-24'-09" W, 4.66 feet, more or less, to a point; thence, S 24°-44'-25" W, 5.65 feet, more or less, to a point; thence, S 70°-56'-05" W, 15.29 feet, more or less, to a point; thence, N 64°-41'-36" W, 94.64 feet, more or less, to a point; thence, S 70°-33'-14" W, 33.92 feet, more or less, to a point; thence, N 64°-24'-23" W, 57.34 feet, more or less, to a point; thence, N 25°-28'-49" E, 2.70 feet, more or less, to a point; thence, S 64°-24'-23" E, 39.27 feet, more or less, to the point of beginning.

August 29, 2013

Exceptions

STANDARD EXCEPTIONS

1. Rights or claims of parties in possession not shown by the public records.
2. Easements or claims of easements, not shown by the public records.
3. Any lien or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
4. Encroachments, overlaps, boundary line disputes, or other matters which would be disclosed by an accurate survey or inspection of the premises.

SPECIAL EXCEPTIONS

1. Taxes subsequent to those for the Third Quarter of 2012-2013, a lien not yet due and payable, and in addition thereto, possible supplemental assessment for taxes for the recent improvements constructed on the premises, if any.
2. Rights of parties entitled to possession, as tenants only, under unrecorded leases.
3. Terms, conditions, restrictions and easements contained in Amended and Restated Entranceway Participation and Maintenance Agreement, recorded in Deed Book 2206 at page 224.
4. Terms and conditions of that certain Lease by and between Norfolk Redevelopment and Housing Authority, Lessor, and Waterside Associated Limited Partnership, Lessee, as evidenced by Memorandum of Lease recorded in Deed Book 1855 at page 715, as amended by Amended and Restated Memorandum of Lease, recorded in Deed Book 2206 at page 209.

5.



EXHIBIT D

6. Terms, conditions, restrictions and easements contained in Entranceway Participation and Maintenance Agreement recorded in Deed Book 1855 at page 727.
7. Terms, conditions, restrictions and easements contained in Deed of Reciprocal Easements, recorded in Deed Book 2794 at page 64.
8. Terms, conditions, restrictions and easements contained in Deed of Easements, recorded in Deed Book 2806 at page 562.
9. Terms and conditions as shown on plat entitled, "Resubdivision of Parcels R-1 and R-2 and City of Norfolk Pump Station Site, Plat of the Waterside, Property of Norfolk Redevelopment & Housing Authority, Norfolk, Virginia," said plat being duly recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia, in Map Book 45 at Pages 123 and 123A.

EXHIBIT "E"

Lessor's Work

Remove all month to month tenants and licensees at Waterside and terminate all month to month leases and licenses at Waterside

Cause any mortgage or any financing statements to be released from the Leased Premises and Waterside to the end that the Leased Premises and Waterside is not encumbered by any mortgage or financing lien.

Demonstrate, to the satisfaction of Lessee, that the repairs and renovations to the Waterside Marina will be undertaken and completed in a time frame reasonably acceptable to Lessee.

Ensure that only Permitted Exceptions affect the Leased Premises.

Transfer to Lessee, free and clear of all liens, good and marketable title to all personal property that is owned by the Lessor or Waterside Associates Limited Partnership and that is located at the Leased Premises or Waterside by a bill of sale in form and substance satisfactory to Lessee. A partial listing of some these goods is attached hereto as Exhibit "E-1".

Provide Lessee with a current estoppel certificate from the Existing Subtenants form attached as Exhibit G.

Pay Lessee any security deposits being held in connection with the Existing Subtenants.

Terminate all Contracts except for the Permitted Encumbrances which Permitted Encumbrances include the Existing Subtenants.

Amend or replace the existing Localized Alternative Sign Overlay District with one that complies in all respects with the Signage Plan in accordance with Section 10.7.

Rezone the Leased Premises and/or obtain the approvals necessary for Lessee to develop and use the Leased Premises for the Permitted Use in the manner set forth in Section 10.2.3 or in a manner reasonably acceptable to Lessee.

City Council passing the Special Exception as written in Exhibit X.

Repair and return to working condition the larger HVAC Chiller (525 Tons) in the Leased Premises. Service the smaller HVAC Chiller (300 Tons) in the Leased Premises and leave in working condition. Service the existing cooling towers in the Leased Premises and leave in working condition. Lessor shall provide Lessee with a maintenance agreement substantially the same as the maintenance agreement now in place for the two (2) chillers for the two (2) chillers and two (2) cooling towers for two (2) years from the February 2014 expiration of the current chillers maintenance agreement.

Management Office

Conference Room

9 Brown Chairs
1 Brown Conference Table
1 Radio System
1 Telephone
3 Pictures

Front Foyer

7 Pictures
2 Plaques
1 Clock
3 Plants
6 Blue and White Chairs
2 Tables

Security Office

1 4 Draw File Cabinet
1 3 Draw Desk (Tan)
1 4 Draw Table Grey
1 Grey Chair
1 Burgundy Chair

Administrative Office

1 Dell Monitor
1 Dell Keyboard
1 Mouse
1 Hard Drive
2 Speakers
2 Burgundy Desks
1 Hewlett Packard Desk Jet 842C
1 5 Draw File Cabinet (Tan)
1 3 Draw File Cabinet (Blue)
1 Bullentin Board
1 5 Shelf Book Case
1 Table
1 Plaid Couch
2 Grey Chair
3 Pictures

Management Office

2 Burgundy Couches

Office Supplies

4 Giant Staplers
Tape
Sticky Notes
1 Shredder
3 5 File Draws
1 Step Stool
1 Tape Dispenser
2 Flash Light
1 Calculator
6 Rolls of Calculator Tape
6 Boxes of Staples
5 Whole Punchers
Large Manilla Envelopes 10x15
CD Envelopes 2 Boxes
Waterside Envelopes
Catalog Envelopes 7 1/2 X10
Catalog Envelopes 10 X 13
8 Boxes paper Clips
10 Hooks
Hanging File Folders
1 Hanging Wall File
1 HP Laser Jet Print cartridge
1 HP Laser Jet Toner Cartridge
1 Pully
1 Book Binding Machine
1 Smith Corona Memory typewriter
Various Miscellaneous Office Supplies

- 4 Blue Pillows
- 2 Grey Chairs
- 1 Black Chair
- 2 Burgundy Desks
- 1 6 Shelf Book Case
- 1 Phone
- 1 5 Draw File cabinet
- 1 Plant
- 1 Security Camera
- 1 Security Monitor
- 1 Hard Drive
- 1 Panasonic Controller
- 3 Pictures
- 2 Pictures in Hallway
- 1 Lanier LD425C Photo Copier
- 1 Hewlett Packett Fax Machine
- 1 Black Cabinet

Support Office

- 1 Tan Table
- 1 Brown Computer Stand
- 1 Phone
- 1 Computer Monitor
- 1 Keyboard
- 1 Fax Machine (Broken)
- 1 Hanging File
- 1 File Cart
- 1 Fan (New)

Kitchen

- 1 Small Refridgerator
- 1 Small Microwave
- 1 Coffee Pot
- 1 Microwave Oven

Bar Norfolk

- 1 ATM Machine
- 1 Kitchen Range
- 1 Salad Mander
- 1 Deep Fryer
- 3 Tier Dish Sink
- 1 Small Sink

Have A Nice Day

- 22 Disco Balls
- 5 Cash Registers
- 2 ATM's Machine
- 12 Speakers
- 11 Televisions
- 1 DJ Booth

Jillian's

- 1 Ice Maker
- 2 Light Fixtures
- 1 Ladder
- 1 Shop Vac
- 15 Beer Tubs
- 2 Trash Cans

2 Ice Makers
1 Water Heater
10 Televisions
5 Speakers
3 Disco Balss
A Bunch of Lightining
1 Neon Light
2 Shots Backs
14 Signages
Any other item in the premises
that is affixed to the premises in
some manner such that removal
would cause any damage of any
kind to the premises.

1 Beer Tap Stand with 3 Taps	1 Freezer
2 Ice Makers	
1 Mixer Amplifier	
1 Deep Freezer	
1 Dual oven	
1 Double fryer	
1 Range	
1 Hood	
1 Prep Stand	
1 Triple Fridge	
1 Floor Mixer	
1 Walk In Freezer	
1 3 Floor Sink	
1 Cooler	
1 Soda Gun	
6 Hanging Lights	
Track Lightining through out Bar	
3 Ceiling Fans	
1 Neon Light	
1 Stop Light	
1 Projector Screen	
Any other item in the premises that is affixed to the premises in some manner such that removal would cause any damage of any kind to the premises.	

Formerly Blackfin (on first floor)

All furnishings

EXHIBIT "F"

Lessee's Work

All Improvements with respect to the Leased Premises which is not (i) Lessor's Work or (ii) work that is, or is anticipated to be, contracted and performed by or on behalf of a Subtenant, that is necessary to initially rehabilitate the Leased Premises into the Project.

EXHIBIT "G"

Form of Subtenant Estoppel

TENANT ESTOPPEL

CENTER: Waterside Festival Marketplace
PREMISES LOCATION: Norfolk, Virginia

LANDLORD: _____

SPACE & BUILDING # Prefill containing Prefill square feet (the "Premises")

TENANT NAME: Prefill

TENANT DBA: Prefill

TENANT NOTICE ADDRESS:
 Prefill

LEASE (including any amendments or assignments by Tenant), COLLECTIVELY THE "LEASE":

Lease dated:

Lease Amendment dated:

Gentlemen:

The undersigned hereby acknowledges that pursuant to the terms of the Lease, if requested by the Landlord, it is required to provide this Tenant Estoppel and that the Landlord and its successors and assigns shall have the right to rely upon the accuracy of the information contained herein; therefore, the undersigned certifies as follows:

1. A correct list of the lease and all assignments, amendments, modifications, and supplements thereto and thereof (collectively referred to herein as the "Lease") is set forth above, except as follows (if none, so indicate):
_____;

2. Landlord has performed all work and satisfied all conditions required to be performed or satisfied by the Landlord under the terms of the Lease except as follows (if none, so indicate):
_____;

3. The commencement date of the term of the Lease is Prefill;

4. The expiration date of the now pending term of the Lease is Prefill and Tenant has no rights to renew or extend the term of the Lease except as follows (if none, so indicate):
_____;

5. The minimum base rental obligation under the Lease is in effect and the current base minimum monthly rental obligation is \$Prefill; the monthly base rental obligation has been paid through Prefill; there has been no pre-payment of any rental amounts more than one month in advance or other amounts due under the Lease except as follows (if none, so indicate):
_____;

6. A security deposit in the amount of \$Prefill was paid to Landlord by Tenant (if none or if not cash security, so indicate): _____;

7. The Lease is valid and in full force and effect, and, to the best of Tenant's knowledge, neither Landlord nor Tenant is in default thereunder. To the best of Tenant's knowledge, Tenant has no defense, set-off or counterclaim against Landlord arising out of the Lease or in any way relating thereto, or arising out of any other transaction between Tenant and Landlord, and no event has occurred and no condition exists, which with the giving of notice or the passage of time, or both, will constitute a default under the Lease except as follows (if none, so indicate): (NB: Lessee needs to acknowledge any issues caused by this Lease Agreement)
_____ None _____;

8. Tenant has not pledged, mortgaged or otherwise encumbered the Lease, and has not assigned its interest in the Lease and has not sublet the Premises except as follows (if none, so indicate):
_____ None _____;

9. Tenant is not involved in any bankruptcy, reorganization, arrangement or insolvency proceedings, except as follows (if none, so indicate): _____ None _____.

The undersigned confirms that in all statements set forth above (items 1-9 inclusive) and if no exception is expressly stated, then there is no exception (and the failure to insert the word "none" shall not be interpreted to imply an exception).

Executed this ____ day of _____, 20____.

TENANT:

Prefill Tenant Entity

By: _____

Title: _____

GUARANTOR'S CERTIFICATE

Payment of the rent and performance of all other obligations of the Tenant under the Lease have been guaranteed by Prefill (the Guarantor") by instrument dated Prefill (the "Guaranty"). The Guarantor hereby certifies, represents and warrants that the Guaranty is in full force and effect and no party to the Guaranty is in default under any terms of the Guaranty.

GUARANTOR:

Prefill Guarantor

By: _____

Title: _____

EXHIBIT "H"

FORM OF SUBTENANT SNDA

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") is made and entered into this ____ day of _____, 20__, by and between _____, a _____ ("Landlord"), _____, a _____ ("Tenant") and _____, a _____ ("Ground Lessor").

WITNESSETH:

WHEREAS, the Landlord and the Ground Lessor have entered into that certain Deed of Lease and Development Agreement dated as of _____, ____ (the "Deed of Lease Agreement") whereunder Ground Lessor has ground leased to Landlord certain property located at 333 Waterside Drive, Norfolk, Virginia, legally described on Exhibit A attached hereto and incorporated herein (the "Property"); and

WHEREAS, the Landlord and the Tenant have entered into that certain Lease dated _____ (the "Retail Lease") pursuant to which Tenant is leasing from Landlord certain premises more particularly described therein which premises are located on the Property (the "Leased Premises").

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. SUBORDINATION. Subject to the terms and conditions of this Agreement, the Retail Lease and the Tenant's rights thereunder shall be subject and subordinate to the Deed of Lease Agreement.

2. NONDISTURBANCE. So long as Tenant is not in default of the Retail Lease after notice and the time to cure as provided for in the Retail Lease, Ground Lessor agrees for itself and its successors in interest that, in the event the Deed of Lease Agreement is terminated for any reason whatsoever, Tenant's possession of the Leased Premises as described in the Retail Lease and Tenant's other rights under the Retail Lease will not be disturbed during the term of the Retail Lease, including any extensions thereof exercised pursuant to the terms of the Retail Lease and that Ground Lessor (or its successor) will recognize and abide by the provisions of the Retail Lease and Tenant's rights thereunder, notwithstanding any other provisions in the Deed of Lease Agreement.

3. ATTORNMENT. Subject to (i) Ground Lessor's (or its successor's) full compliance with the conditions relating to non-disturbance as set forth in paragraph 2 above and (ii) the performance by Ground Lessor (or its successor) of all obligations of the landlord under the Retail Lease with respect to obligations arising and accruing from and after the date that the Deed of Lease Agreement is terminated, Tenant agrees to attorn to, accept and recognize Ground Lessor (or its successor) as the landlord under the Retail Lease for the then-remaining balance of the term of the Retail Lease, and any extensions thereof as made pursuant to the Retail Lease. Tenant agrees to execute and deliver, at any time and from time to time, upon the request of Ground Lessor (or its successor), any reasonable instrument which may be necessary or appropriate to evidence such attornment. It is agreed, however, that Ground Lessor (or its successor) shall not be (a) liable for any act or omission of Landlord, unless Tenant has delivered notice of the breach to Ground Lessor (or its successor) and the breach is continuing at the time the Deed of Lease Agreement is terminated; or (b) subject to any offsets or defenses that Tenant might have against Landlord, other than offsets or defenses specifically authorized in the Lease; or (c) bound by any rent or additional rent that Tenant might have paid for more than one month in advance to Landlord, unless the same is so required under the Retail Lease; or (d) bound by an amendment or modification of any material provision of the Retail Lease made after the date of this Agreement without the prior written consent of Ground Lessor (or its successor), which consent shall not be unreasonably withheld, delayed or conditioned; or (e) liable for return of any security deposit which was not delivered to Ground Lessor (or its successor).

4. NOTICES. All notices called for herein to be given shall be given by certified mail, return receipt requested, postage prepaid, addressed as follows:

To Ground Lessor:

Attention: _____

To Landlord:

Attention: _____

With Copy To:

To Tenant:

Attention: _____

With Copy To:

5. SUCCESSORS AND ASSIGNS. The obligation and rights of the parties pursuant to this Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns.

6. LAW GOVERNING. This Agreement shall be governed by the laws of the State of Virginia.

(remainder of page intentionally left blank)

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date first above written.

"Landlord"

By: _____

Its: _____

"Tenant"

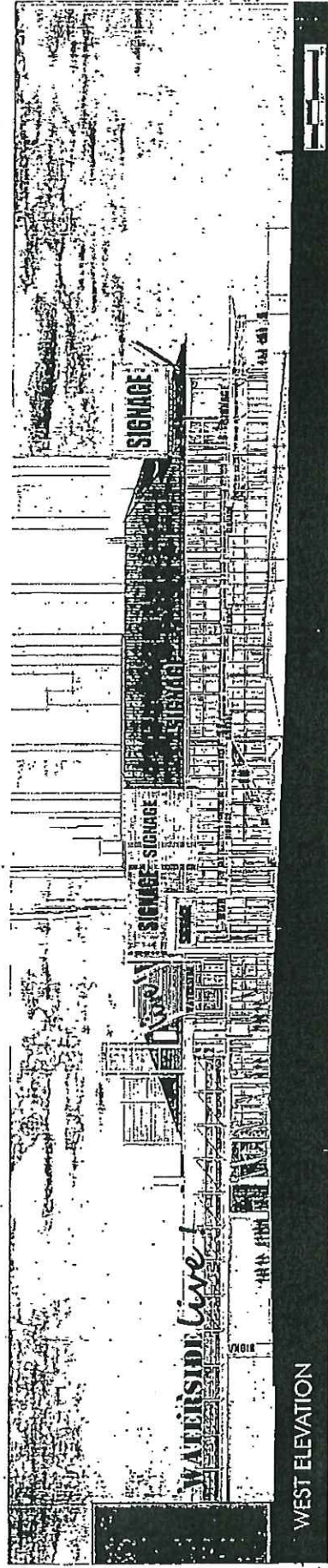
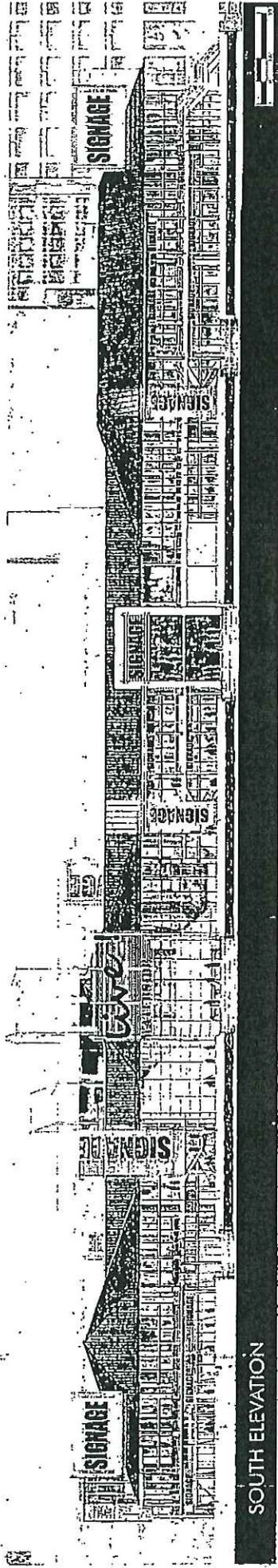
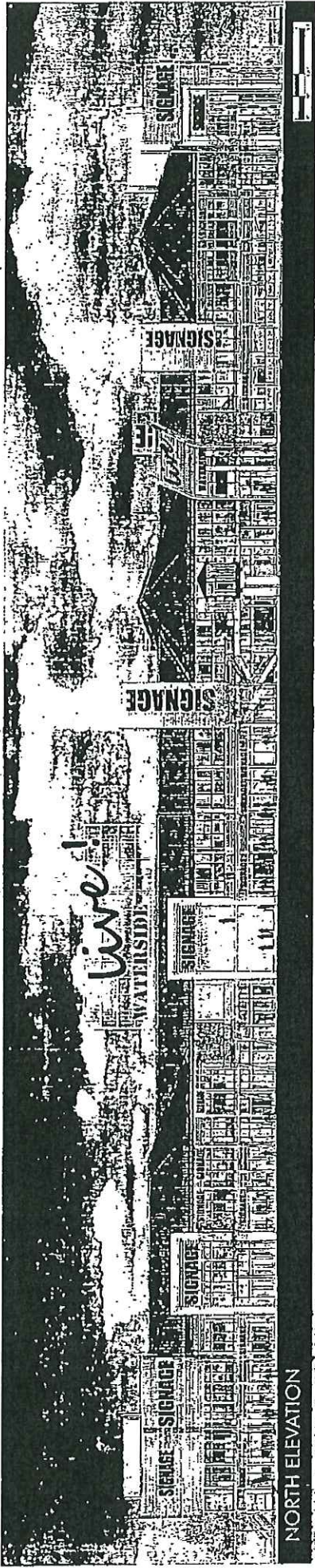
By: _____

Its: _____

"Ground Lessor"

By: _____

Its: _____



WATERSIDE LIVE!

11-29. Localized Sign Overlay District for the Town Point.

11-29.1 *Purpose.* Town Point is unique in Norfolk as it provides a series of entertainment and cultural venues along the waterfront in Downtown Norfolk. The unique character of the area lends itself to exceptional economic and cultural vibrancy distinguished by bold architecture and defined open spaces complemented by exceptional, lively and animated signage. The special standards for signage established for this distinctive area are intended to protect the safety and welfare of the public while recognizing the unique character of the area.

11-29.2 *Location.* The properties encompassed by this overlay district are located between the south side of Waterside Drive and the Elizabeth River extending between and including the USS Wisconsin to the west and the Waterside Festival Marketplace to the east. The properties comprise four venues, more particularly described as follow:

- (a) *Waterside.* Property located on the southwest corner of Waterside Drive and Atlantic Street, fronting 600 feet, more or less, along the southern line of Waterside Drive and running westwardly; premises now or formerly numbered 333 Waterside Drive and generally known as The Waterside Festival Marketplace.
- (b) *Town Point Park.* Properties in the area generally bounded on the south by the Elizabeth River, on the east by the extension of Atlantic Street, on the north by Waterside Drive, on the northwest by West Main Street; not including properties identified and described herein as *Waterside*, *Half Moon Cruise Center*, and *Nauticus*; property fronts 1,905 feet, more or less, along the southern line of Waterside Drive.
- (c) *Half Moone Cruise Center.* Property located on the southwest corner of Waterside Drive and West Main Street, property fronts 52 feet, more or less, along the western line of Waterside Drive and 750 feet, more or less, along the southern line of West Main Street; premises numbered 111 Waterside Drive.
- (d) *Nauticus.* Property located on the northwest corner of Waterside Drive and West Main Street, property fronts 500 feet, more or less, along the western line of Waterside Drive and 1,250 feet, more or less, along the northern line of West Main Street; premises numbered 1 Waterside Drive.

11-29.3 *Definitions.* The following definition applies exclusively to the regulations contained in this overlay district. All definitions for sign types not defined herein are found in Chapter 16, at section 16-3.

EXHIBIT I-2

Electronic Display Panel. A single panel or combination of panels capable of displaying messages in the form of text, images, video and animation in digital format. Messages may include information about goods, services, entertainment or attractions sold or offered at a location other than the premises on which the sign is erected.

11-29.4 *District Regulations.* The regulations of Chapter 16, including section 16-8.6, shall apply except with regard to the specific regulations set forth herein, in which case these overlay district regulations shall apply.

(a) The following types of signs shall be permitted within this overlay district:

- (1) A-Frame sign
- (2) Activity sign
- (3) Animated or flashing sign
- (4) Awning sign
- (5) Banner
- (6) Directional sign
- (7) Electronic display panel
- (8) Freestanding sign
- (9) Identification sign
- (10) Marquee sign
- (11) Monument sign
- (12) Projecting sign
- (13) Public service message board
- (14) Pylon sign
- (15) Roof sign
- (16) Wall sign

(b) Signs permitted in this overlay district shall be limited in location, sign type, sign face area, and height as shown in Table 11-29A, "Sign Dimensional Standards".

Table 11-29A Sign Dimensional Standards

Venue	Locations where signs are permitted	Maximum Cumulative Sign Face Area (square feet)	Maximum Height (feet above grade)
Nauticus	All elevations of building and freestanding	2,000	45
Half Moone Cruise Center	All elevations of building and freestanding	2,000	45
Town Point Park	All areas and elevations of buildings	1,000	25

EXHIBIT I-2

Venue	Locations where signs are permitted	Maximum Cumulative Sign Face Area (square feet)	Maximum Height (feet above grade)
Waterside	Freestanding	9,500	50
Waterside	North elevation of building	9,050	60
Waterside	South elevation of building	6,050	60
Waterside	East elevation of building	1,050	60
Waterside	West elevation of building	2,250	60

EXHIBIT "J"

Marina Support Space Form Sublease

SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT ("Sublease"), made this day of , 20--, by and between **NORFOLK DISTRICT ASSOCIATES, LLC**, a Maryland limited liability company whose address is 601 East Pratt Street, 6th Floor, Baltimore; Maryland 21202 ("Sublessor"), and **THE CITY OF NORFOLK**, Virginia, a municipal corporation of the Commonwealth of Virginia ("Subtenant").

WITNESSETH:

1. **PREMISES.** Sublessor leases and demises to Subtenant and Subtenant takes and leases from Sublessor 700 square feet ("Premises") in the property that is the subject of the Deed of Lease and Development Agreement (the "LDA") dated between Waterside Associates Limited Partnership and Sublessor, as shown on Exhibit A hereto attached and incorporated by reference(the "Project"). Subtenant accepts the Premises "AS-IS".

2. **TERM.** This Sublease shall be as long as Sublessor's Lease of the Premises is in effect, unless terminated prior thereto in accordance with this Sublease.

3. **PURPOSE; NUISANCE.** The Premises shall be used solely as a shower and laundry facility (includes but not limited to shower, bathroom and laundry) to service the boating patrons of the Waterside marina, which is shown on Exhibit A, and for no other purpose. Subtenant covenants not to allow the Premises to be used for any illegal or immoral purpose and agrees not to do (or suffer to be done) in or about the Premises any act or thing which may be a nuisance, annoyance, inconvenience or damage to Sublessor, the Premises and Sublessor's other Subtenants. The Premises shall not be used for retail, food, and/or drink sales or the providing of alcoholic beverages.

4. **RENT; PAYMENTS.** The Annual rent will be in the amount of One Dollar (\$1.00) Dollar to be paid upon invoice by Sublessor to Subtenant. Sublessor shall be responsible for the payment of all real estate taxes and insurance.

5. **ASSIGNMENT.** Except for an assignment of this Sublease to the operator of the Waterside Marina, if the marina is not operated by Subtenant, Subtenant covenants not to assign this Sublease nor sublet the Premises or any part thereof, nor permit any other person or legal entity to occupy same, without the prior written consent of Sublessor, in Sublessor's sole and absolute discretion. Subtenant shall not profit off of any assignment or sublease of this Sublease or the Premises. In the event of a sublease or assignment, Subtenant will not be released of its obligations hereunder.

6. REMEDIES UPON DEFAULT. If Sublessor is in breach of any provision of this Sublease, Subtenant shall give notice of the breach to Sublessor. Sublessor shall have thirty days from the date of the notice to cure the breach or Sublessor shall be deemed in default but in no event may Subtenant terminate this Sublease. Subtenant's sole remedy is to enjoin any breach. Sublessor agrees that the extraordinary nature of the Sublease and Subtenant's rights qualify for the application of injunction.

7. SUBTENANT'S FURNITURE AND FIXTURES. All furniture, fixtures and equipment which are now or may be hereafter placed in the Premises are or will be owned by Subtenant.

8. INSURANCE BY SUBLESSOR. Sublessor shall obtain and keep in force during the term of this Sublease a policy or policies of insurance covering loss or damage to the Premises and providing protection against all perils included within the classification of fire, with extended coverage, vandalism, malicious mischief and/or special extended perils (all risk) and rental loss insurance.

9. UTILITY BILLS. To the extent possible and separately metered and billed, Subtenant covenants to pay promptly for all gas, water, electricity, sewage disposal, storm water management services and/or fees and other utilities used or consumed at the Premises during the term of this Sublease.

10. SUBLESSOR'S REPAIRS AND RIGHT OF ENTRY. Sublessor shall be responsible to maintain and repair the roof, exterior structural portions of the Premises, and Sublessor covenants that it will make such repairs as may be necessary to keep the same in good condition of repair, at its own cost and expense and with reasonable dispatch, after being notified in writing by Subtenant of the need therefore. Any and all other repairs and/or replacement of equipment, fixtures and appurtenances shall be the responsibility of the Subtenant as set forth in paragraph 11 below. Notwithstanding the foregoing, if the need for such repair is occasioned by a casualty resulting from the negligence or willful act of Subtenant, or any of his agents, employees or contractors, and if such casualty shall not be within the coverage of the policy of insurance carried by Sublessor pursuant to paragraph 8, then such repairs shall likewise be made by Sublessor and reimbursed by Subtenant. Sublessor, its agents, employees and contractors, shall have the unobstructed right to enter the Premises, from time to time, for the purpose of making any of the aforesaid repairs. Subtenant shall not be entitled to any claim for damages by reason of any inconvenience, annoyance, and/or injury to business arising out of any repairs made by Sublessor pursuant to this paragraph, provided that any such repairs are completed within thirty (30) days of notification. In the event that Subtenant's construction of the Project disturbs Sublessee's quiet enjoyment, Subtenant may relocate Sublessee to temporary space during the period of construction. Subtenant shall pay all costs of temporary space.

11. SUBTENANT'S MAINTENANCE AND REPAIRS. During the term of this Sublease, at Subtenant's sole cost and expense, Subtenant covenants to: (i) maintain the interior of the Premises, (ii) to unstop promptly all choked waste pipes and toilets, and (iii) to keep Premises in good order and condition, ordinary wear and tear excepted. Subtenant shall keep the

Premises at a sufficient temperature to prevent the pipes from freezing. Subtenant agrees that Subtenant has received and will keep, at Subtenant's expense, the Premises in good, safe, and sanitary condition.

12. INSECTS AND RODENTS. Sublessor covenants to do those things reasonably necessary, or required by law, to keep the Premises free of roaches, rodents, insects and other pests.

13. ALTERATIONS. Subtenant must receive Sublessor's written approval for any alteration work affecting the exterior of the Premises prior to commencing such work in the Premises. Subtenant may make such interior alterations as do not disturb Sublessor's remaining leasehold.

14. COMPLIANCE WITH GOVERNMENTAL REQUIREMENTS:
INDEMNIFICATION. Subtenant will comply with and observe all laws, ordinances, rules, regulations and requirements (including zoning) of the federal, state, and municipal governments, relating to the Premises and/or the business conducted therein. Subtenant covenants to save Sublessor harmless from and against any and all liability for injury or damage to person and property caused by the breach of any covenant or agreement of Subtenant contained in this Sublease.

15. CONDITION. Upon the expiration or termination of this Sublease, Subtenant covenants to deliver to Sublessor the Premises and all appurtenances thereto, peaceably and quietly, in as good an operating condition as received or may hereafter be put by Sublessor or Subtenant, ordinary wear and tear and damage from fire or other casualty not occasioned by the fault, negligence or willful misconduct of Subtenant, Subtenant's agents, employees, and independent contractors excepted.

16. DAMAGE BY FIRE. It is agreed that if the Premises, or the building or buildings of which the Premises are a part, or any portion thereof, or any improvements now or hereafter constructed thereon or added thereto shall be damaged by fire or other casualty so as to render the Premises or any material portion thereof untenable in the opinion of Subtenant or Sublessor, Sublessor and Subtenant shall each have the right, at any time within thirty (30) days after said fire, to cancel and terminate this Sublease by giving written notice of its intention so to do to the other party, within said thirty (30) day period. If the Sublease is not so terminated, the Premises shall be restored with reasonable dispatch by and at the expense of Sublessor (subject to the provisions of paragraph 10), but only to the extent of available insurance proceeds (or proceeds from Subtenant as required by paragraph 10).

17. CONDEMNATION. If all, or any portion of the Premises shall be taken under the exercise of the power of eminent domain or sold to the holder of such power pursuant to a threatened taking, and such taking renders the remaining Premises unusable for the purpose for which it was previously occupied by Subtenant, then this Sublease shall terminate upon such taking or when such sale is completed, otherwise the Sublease shall remain in effect for the remaining term as to the portion not so taken. Sublessor shall not be entitled to any part of the

condemnation award or purchase price and Subtenant expressly waives any and all rights thereto.

18. INDEMNITY; INSURANCE BY SUBTENANT. Subtenant agrees to hold Sublessor harmless from and against any and all injury, or death to persons or damage to property in, on, or about the Premises except to the extent that any such injury or damage shall be caused by Sublessor or its agents.

19. NO SUBROGATION. All fire, extended coverage, and liability insurance policies, and any other policies relating to other casualties or losses, carried by any party to this Sublease covering the Premises and/or the contents thereof, and/or the building containing the Premises shall expressly waive any right on the part of the insurer against any other party to this Sublease, which right, to the extent not prohibited or violative of any such policy, is hereby expressly waived.

20. NO WAIVERS. Subtenant and Sublessor agree that any failure of either party to insist upon strict observance of any covenant, provision or condition of this Sublease in any one or more instances shall not constitute or be deemed a waiver, at that time or thereafter, of such or any other covenant, provision or condition of this Sublease.

21. NOTICE. Any notice to be given to Sublessor as herein provided shall be deemed to be given when duly posted in U.S. Registered or certified mail (return receipt requested), or when delivered to a nationally recognized courier service, addressed to Sublessor, at business address shown above, and any notice to be given to Subtenant as herein provided shall be deemed to be given when duly posted in U.S. registered or certified mail (return receipt requested), or when delivered to a nationally recognized courier service, addressed to Subtenant at the Premises. Either Sublessor or Subtenant may change the place designated for the giving of such notice by written notice duly and timely given to the other.

22. LIMITATION OF SUBLESSOR'S LIABILITY. It is agreed that Sublessor shall not be liable or responsible in any way for any injury or death to persons or damage to property sustained in or about the Premises during the term of this Sublease, unless due to Sublessor's own willful or negligent acts.

23. RELOCATION. At anytime and from time to time throughout the Term herein, Sublessor shall have the right to relocate the Premises (or substitute premises) to another premises in the Project. In the event Sublessor makes such election, (a) Sublessor shall notify Subtenant of such election in writing at least thirty (30) days prior to the date on which such relocation shall be required to occur, (b) the new premises shall be no smaller than the existing Premises, (c) Sublessor shall pay the entire cost of moving Subtenant's fixtures, equipment and inventory to the new premises if elected by Subtenant, (d) this Sublease shall remain in effect pursuant to its terms with respect to the substitute premises except that Sublessor and Subtenant shall enter into an amendment of this Sublease agreeing to and evidencing the relocation of the Premises.

24. MISCELLANEOUS.

a. Successors Bound. All provisions, conditions and agreements of this Sublease shall be binding upon and inure to the benefit of the successors and assigns of Sublessor and Subtenant.

b. Headings. The headings appearing in this Sublease are intended only for convenience of reference, and area not to be considered in construing this instrument.

c. Execution. This Sublease is not binding on the parties hereto until it is signed and delivered by or on behalf of each party.

d. Waiver of Jury Trial. Each party hereby waives trial by jury regarding disputes arising out of this Sublease.

e. Estoppel and SNDA. IF requested by Sublessor, Subtenant shall execute an estoppel and SNDA on Sublessor's lender's standard form.

IN WITNESS WHEREOF, each party hereto has executed this Sublease in his or her name or has caused this Sublease to be executed in its name and behalf by its proper officer, partner, manager or fiduciary, and in a manner authorized by the applicable governing documents of said corporation, partnership, limited liability company, trust or other legal entity.

NORFOLK DISTRICT ASSOCIATES, LLC

By: _____ [SEAL]

Title: _____

CITY OF NORFOLK

By: _____ [SEAL]

City Manager

Attest:

City Clerk

Approved as to contents:

Assistant City Manager

Approved as to form and correctness:

Deputy City Attorney

CERTIFICATION OF FUNDING

I hereby certify that the money for this contract is in the City Treasury to be credit of the fund from which it is to be drawn and not appropriated for any other purpose.

Account: _____

Amount: _____

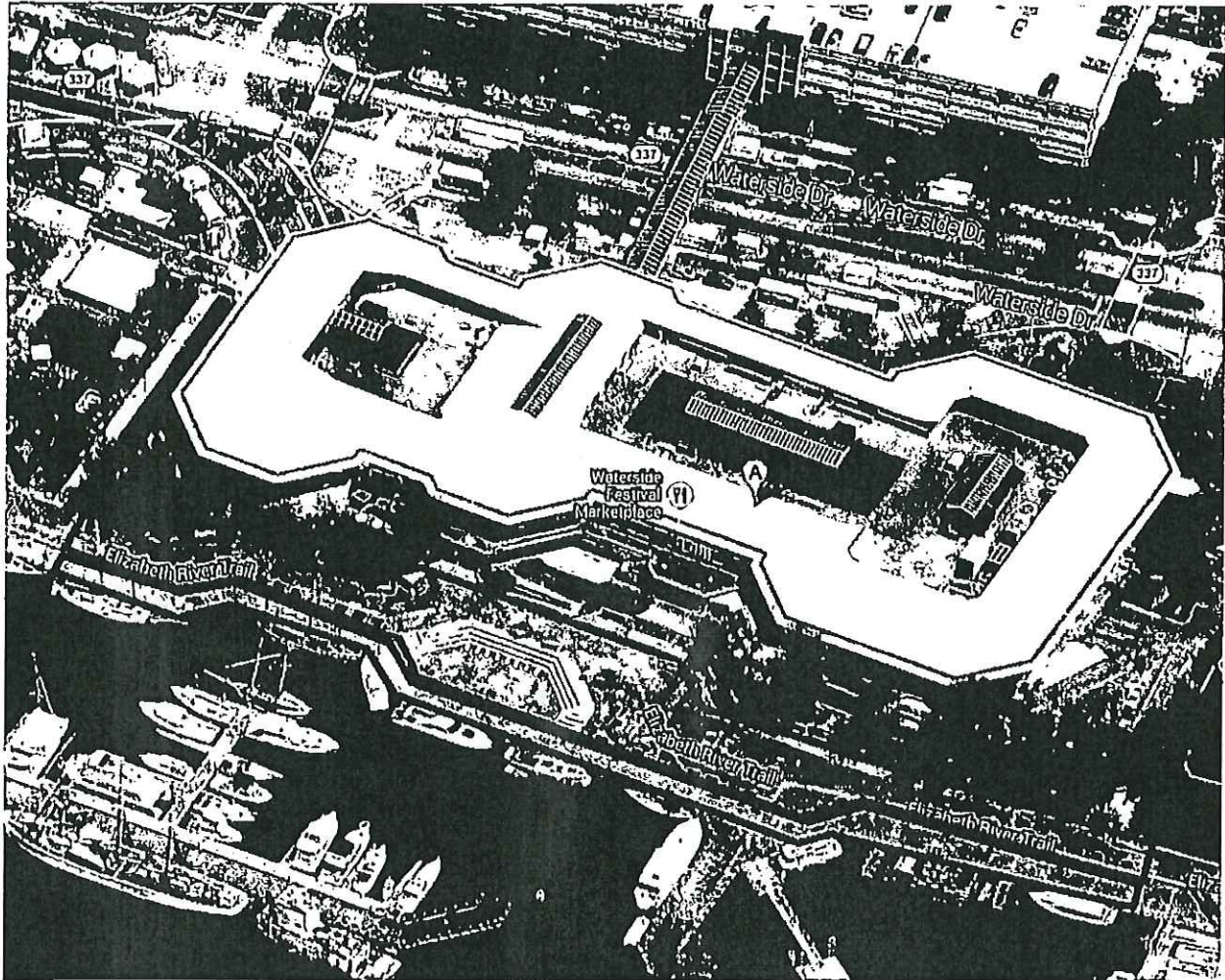
Vendor Code: _____

Contract Number: _____

Business License No.: _____

EXHIBIT "K"

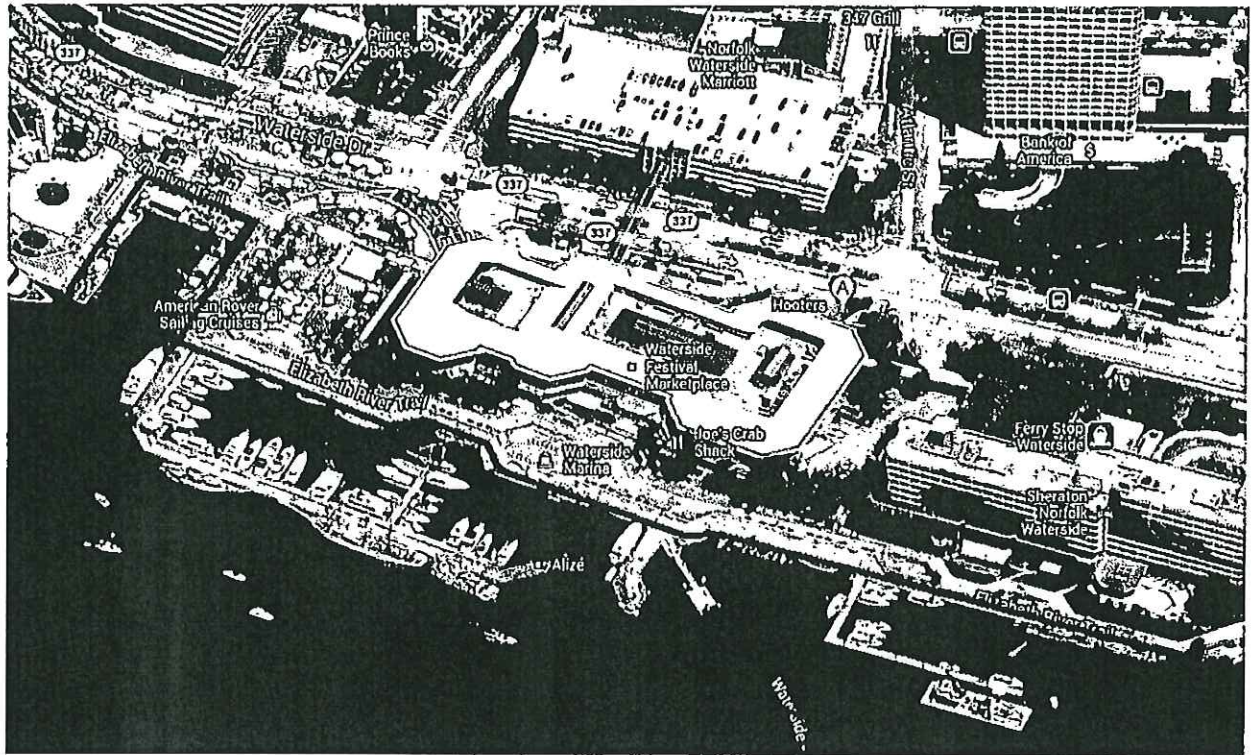
Pedestrian Promenade



Pedestrian Promenade Shown Outlined in Red
Walkway for use when Pedestrian Promenade is Controlled by Lessee Outlined in Blue

EXHIBIT "L"

Waterside Marina



Waterside Marina Shown Outlined in Red

PERFORMANCE BASED GRANT & MEMORANDUM OF AGREEMENT

THIS PERFORMANCE BASED GRANT & MEMORANDUM OF AGREEMENT ("Agreement") is made as of the Effective Date (as such term is defined on the signature page of this Agreement) by and among the **CITY OF NORFOLK**, a municipal corporation of the Commonwealth of Virginia ("City"), **NORFOLK REDEVELOPMENT AND HOUSING AUTHORITY**, a duly organized and existing political subdivision of the Commonwealth of Virginia (the "Authority"), and **NORFOLK DISTRICT ASSOCIATES, LLC**, a Maryland limited liability company ("NDA").

WITNESSETH:

WHEREAS, the Authority owns certain land and improvements located at 333 Waterside Drive in the City, commonly referred to as the Waterside Festival Marketplace ("Waterside");

WHEREAS, the City Council of the City ("City Council") selected The Cordish Companies, a Maryland corporation ("Cordish"), an affiliate of NDA, to redevelop Waterside in accordance with the provisions of the Lease (as such term is herein);

WHEREAS, NDA, has entered into a Deed of Lease and Development Agreement dated _____ ("Lease") with the Authority for the redevelopment of Waterside;

WHEREAS, the proposed redevelopment of Waterside by Cordish through, its affiliate, NDA, in the manner described in the Lease, has been found by both the Authority and the City Council to constitute a significant economic development opportunity for the City, a positive factor in achieving the objectives of the City, and worthy of inducement, as set forth in the resolutions previously adopted by the Authority and actions taken by the City Council approving the terms herein;

WHEREAS, the proposed redevelopment of Waterside by NDA represents a significant investment on the part of NDA and Cordish, which investment was induced in part by the NRHA Allowance (as such term is defined in the Lease);

WHEREAS, the Authority is empowered pursuant to Section 36-19 of the Code of Virginia of 1950, as amended, to make grants available for redevelopment, construction, revitalization and the prevention of blight from any funds received by it;

WHEREAS, the Authority has agreed to fund the NRHA Allowance through such a grant, in the manner set forth herein;

WHEREAS, the City is empowered pursuant to Section 36-7 of the Code of Virginia of 1950, as amended, to donate money to the Authority for the purpose of enabling or assisting the Authority to carry out its purposes; and

WHEREAS, the City has agreed to pay to the Authority such amounts as are required to fund the NHRA Allowance.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises, covenants and conditions herein contained, the parties do hereby covenant and agree as follows:

I. Definitions

The following italicized terms shall have the meanings set forth unless the context clearly requires otherwise:

- 1.1 *Development* means the Project, as that term is defined in the Lease.
- 1.2 *Eligible Costs* means all costs relating to designing, developing, constructing, leasing and equipping the Development, including direct construction costs, site preparation costs, the costs of architectural and engineering consultants and plans, the costs of construction management fees (but only if such construction management fees are paid to a third party not related to Cordish), the costs of furniture, equipment and fixtures for the Development, leasing commissions (but only if such commissions are paid to a third party not related to Cordish), tenant allowances (paid to or on behalf of tenants), hard and soft costs of capital improvements in the Development by NDA, Cordish and/or third parties, permitting fees, title fees, legal fees, travel costs, and overhead for the Development in an amount equal to 5% of the other Eligible Costs.
- 1.3 *Maximum Aggregate Cap* is THIRTY-TWO MILLION AND NO/100 DOLLARS (\$32,000,000.00), which is the maximum amount of money to be paid out pursuant to the Grant (as such term is defined herein).
- 1.4 *Grant* means the sums to be paid by the City to the Authority and by the Authority to NDA as an inducement for Cordish and NDA to undertake and complete the Development and as an inducement for NDA to operate the Development, pursuant to the terms of this Agreement and the Lease, which sums are to be determined pursuant to the provisions of Section 2.1. The Grant is the "Performance Based Grant" described in Section 5.10 of the Lease.
- 1.5 *Grant Commencement Date* means the date that the Development is substantially completed and open for business. Such date shall be deemed to be the grand opening date of the Project, as determined by NDA, which date shall occur after Substantial Completion (as that term is defined in the Lease).
- 1.6 *Grant Expiration Date* means the earlier of the following dates: (a) the date on which the Grant has been fully funded, or (b) the twentieth (20th) anniversary of the Grant Commencement Date.
- 1.7 *Grant Term* means the period commencing on Grant Commencement Date and expiring at midnight Eastern Time on the Grant Expiration Date.
- 1.8 *Grant Year* means a one year period that commences on the Grant Commencement Date or the anniversary of the Grant Commencement Date, as applicable, and ends on the day immediately preceding the anniversary of the commencement of such one year

period.

1.9 *Installment Grant Payment* means the portion of the Grant, which is paid annually in arrears in the manner described herein for each year of the Grant Term.

1.10 *Leasehold Mortgage* means any deed of trust, mortgage, security agreement or other instrument in the nature thereof at any time and from time to time constituting a lien upon the leasehold estate of NDA created by the Lease, but not upon the reversionary fee estate of the Authority in Waterside.

1.11 *Leasehold Mortgagee* means the holder or, collectively, the holders of the note(s) or other obligations secured by a Leasehold Mortgage.

1.12 *Supplemental Grant Payment* is defined in Section 2.3 hereof.

II. The Grant

2.1 The "Grant" consists of annual periodic payments from the City to the Authority, calculated in the following manner: (a) 0.7% of all retail sales at the Development (rent and similar payments under subleases with the Authority are excluded) during the Grant Term, (b) 4.55% of all sales of food and beverages at the Development during the Grant Term, and (c) 7% of all admissions charges at the Development during the Grant Term. The foregoing formula shall be referred to hereafter as the "*Waterside Revenue Share Formula*". The Grant shall not exceed the lesser of: (a) Maximum Aggregate Cap or (b) eighty percent (80%) of the Eligible Costs. The sole source of funds for the Grant shall be the revenue generated at the Development that is directly or indirectly collected or received by the City.

2.2 The Grant shall be paid by the City to the Authority in annual installment payments (*i.e.*, Installment Grant Payments) and if necessary, Supplemental Grant Payments. Each Installment Grant Payment from the City to the Authority shall be made on or before the date which is one hundred eighty (180) days after the anniversary of the Grant Commencement Date, utilizing the funds directly or indirectly received by the City pursuant to Section 2.1 for the applicable Grant Year. In the event that after any Installment Grant Payment the City directly or indirectly receives funds identified in Section 2.1 which would have been part of the Installment Grant Payment, such after received funds (even if received after the Grant Expiration Date) shall be promptly paid to the Authority to supplement the underpaid Installment Grant Payment (a "*Supplemental Grant Payment*"). In the event of the overpayment of an Installment Grant Payment, and notice of the same by the City with reasonable supporting documentation of such overpayment, NDA shall promptly return any such overpayment.

2.3 The Grant shall be paid by the Authority to NDA through Installment Grant Payments and, if applicable, Supplemental Grant Payments made promptly to NDA after receipt of the same by the Authority. The City, the Authority and NDA acknowledge and agree that, if the Grant has not been fully funded prior to the twentieth (20th) anniversary of the Grant Commencement Date, the final Installment Payment will be made and subsequent Supplemental Grant Payments may be made after the Grant Expiration Date but only from funds identified in

Section 2.1 directly or indirectly collected or received by the City and/or the Authority, or attributable to periods occurring, during the Grant Term. All such amounts shall be promptly paid to the Authority by the City and by the Authority to NDA.

2.4 The Authority and the City collectively and cooperatively shall provide or cause to be provided all personnel, consulting services, equipment and materials reasonably necessary to fulfill their obligations and exercise their rights under this Agreement and the Lease.

III. Obligations of the Authority

3.1 All Installment Grant Payments and Supplemental Grant Payments made by the City to the Authority shall be kept by the Authority in a separate bank account (the "*Authority Allowance Account*") for use only in connection with this Agreement and shall not be commingled with other funds.

3.2 The Authority hereby grants a security interest to NDA in all of its rights, title, and interests, whether now existing or hereafter acquired, in the Authority Allowance Account into which such Installment Grant Payments and Supplemental Grant Payments shall be made under this Agreement and all proceeds and products of the foregoing, in each case as such terms are defined under the Uniform Commercial Code as in effect in the Commonwealth of Virginia from time to time (the "*UCC*"). The security interest hereby granted is to secure the payment to NDA of the NRHA Allowance. The security interest granted hereunder shall terminate and be of no further force and effect upon expiration of this Agreement.

3.3 The Authority shall make payment of the NRHA Allowance to NDA, in the manner described herein. This obligation shall be absolute and continuing provided that the Lease has not been terminated by the Authority as a result of the occurrence of an "Event of Default by Lessee" pursuant to Section 17.2.1 (b) of the Lease for which a Leasehold Mortgagee has not requested a new lease pursuant to the provisions of Section 16.3.3 of the Lease. The obligations and liability of the Authority under this Article 3 shall continue in effect until the entire NRHA Allowance has been paid in full to NDA.

IV. Obligations of the City

4.1 Subject to the provisions of Section 4.2 hereof, the City shall make payments to the Authority, based on the Waterside Revenue Share Formula, in accordance with the provisions of Article II of this Agreement, without offset, deduction or counterclaim.

4.2 In the event that the Lease has been terminated by the Authority as a result of the occurrence of an "Event of Default by Lessee" pursuant to Section 17.2.1 (b) of the Lease for which a Leasehold Mortgagee has not requested a new lease pursuant to the provisions of Section 16.3.3 of the Lease, then the City shall be relieved of its obligation to make payments to the Authority under this Agreement.

4.3 The City agrees to cooperate with the Authority and NDA in obtaining any information necessary from the Commonwealth to challenge the sales tax revenue payments made to the City by the Commonwealth. The City shall provide the Authority and NDA with

annual financial statements setting forth the total revenue generated at the Development that was directly or indirectly collected or received by the City for the applicable Grant Year, together with information regarding the calculation of the applicable Installment Grant Payment or Supplemental Grant Payment, at the time of any such Installment Grant Payment, or such Supplemental Grant Payment or from time to time upon receipt of written request from the Authority or NDA.

4.4 The total revenue generated at the Development that is directly or indirectly collected or received by the City shall, until paid to the Authority, be kept in a separate account to fund the Installment Grant Payments and Supplemental Grant Payments made by the City to the Authority for use only in connection with this Agreement and in trust for and for the benefit of NDA and shall not be commingled with other funds.

V. Payments to NDA

5.1 The Authority shall forward payments directly to NDA, without offset, deduction or counterclaim, by wire transfer of immediately available funds to the account of NDA at the following account, or other such account as NDA may direct by written notice to the Authority:

Bank:	M&T Bank - Baltimore, Maryland USA
Account Name:	Norfolk District Associates, LLC
Account Number:	9859352040
ABA #:	052000113
Reference:	Grant Payment

VI. Initial Disbursement

6.1 The initial disbursement ("*Initial Disbursement*") of the Grant and payment to NDA of the NRHA Allowance shall be subject to the following conditions: (a) a "Certificate of Completion" (as that term is defined in the Lease) has been provided by NDA to the Authority and the Development shall have initially opened for business; and (b) NDA shall provide to the City and the Authority: (i) a statement, prepared by a certified public accountant, setting forth the Eligible Costs incurred by NDA, together with reasonable supporting documentation; and (ii) a certificate from one or more of the tenants of the Development stating the total amount spent by or on behalf of such tenant in connection with construction of improvements in such tenant's individual space within the Development that constitute Eligible Costs, if any.

VII. Reports and Additional Eligible Costs

7.1 NDA shall use commercially reasonable efforts to include in the leases with retail and commercial tenants within the Development a requirement that each such tenant file annual reports with respect to gross receipts, ticket sales, meals and beverage sales and retail sales made at or from its premises in the Development (collectively, "Reports") and furnish copies of the applicable Reports throughout the Grant Term to NDA, the City and the Authority, provided, however, it is acknowledged that a failure to include this obligation in a Lease is not a default of

this Agreement. Similarly, the parties specifically acknowledge that the failure of NDA's tenants to comply with filing of Reports is not a default by NDA and does not relieve the parties of their obligations under this Agreement.

7.2 After the Initial Disbursement (as such term is defined herein) of the Grant, NDA shall have the right, from time to time, to provide to the City and the Authority (a) statements, prepared by a certified public accountant, setting forth additional Eligible Costs incurred by NDA that were not included in previous statements of Eligible Costs, together with reasonable supporting documentation, and (b) a certificate from one or more of its tenants stating the total amount spent by or on behalf of such tenant in connection with construction of improvements in such tenant's individual space within the Development that constitute Eligible Costs, if any. Such reports and certificates shall be in a form that is reasonably satisfactory to the Authority. As additional Eligible Costs are provided periodically, the potential amount of the Grant will increase up to the Maximum Aggregate Cap. In no event shall any Eligible Costs incurred after the Grant Expiration Date qualify for reimbursable grant payments under this Agreement.

VIII. Representations and Warranties

8.1 NDA represents and warrants that it is a duly organized and validly existing entity under the laws of the State of Maryland, is a limited liability company in good standing in Maryland, and has the power and authority to own its properties and other assets and to transact the business in which it is now engaged or proposes to engage. The execution, delivery and performance by NDA of this Agreement and the Lease have been duly authorized and will not contravene or constitute (with or without the giving of notice or lapse of time or both) a violation of any provision of applicable law, a violation of the organizational documents of NDA or a default under any agreement, injunction, order, decree or other instrument binding on or affecting NDA.

8.2 The Authority represents and warrants that it is duly created, validly existing and in good standing under the laws of the Commonwealth of Virginia, and has all powers, governmental licenses, authorizations, consents and approvals required to act as a "Housing Authority" under the "Housing Authorities Law" of the Code of Virginia of 1950, as amended. The Authority further represents and warrants that the execution, delivery and performance by the Authority of its obligations under the this Agreement and the Lease have been duly authorized and will not contravene or constitute a violation of any provision of applicable law or a default under any agreement, injunction, order, decree or other instrument binding on or affecting the Authority.

8.3 The City represents and warrants that the execution, delivery and performance by the City of its obligations under the this Agreement have been duly authorized and will not contravene or constitute a violation of any provision of applicable law or a default under any agreement, injunction, order, decree or other instrument binding on or affecting the City.

8.4 The City represents and warrants that it has appropriated Thirty Two Million and 00/100 Dollars (\$32,000,000.00) to fund the obligation of the City to pay up to Thirty Two Million and 00/100 Dollars (\$32,000,000.00) to the Authority to fund the Grant in accordance

with the provisions of this Agreement which is a legally binding obligation of the City and does not require any annual appropriations by the City, including the City Council of the City.

IX. Rights of Leasehold Mortgagee

9.1 NDA shall have the right at any time to enter into a Leasehold Mortgage and in connection with such may pledge, encumber, and/or collaterally assign its rights under this Agreement and its rights to receive the Grant. In conjunction with any such leasehold financing, the parties agree as follows:

9.1.1. The City and the Authority agree to accept performance and compliance by any Leasehold Mortgagee of and with any term, covenant, agreement, provision, or limitation on NDA's part to be kept, observed, or performed by NDA hereunder.

9.1.2. Following an event of default by NDA under the terms of this Agreement, the City and the Authority will take no action to terminate this Agreement, unless they shall first give Leasehold Mortgagee notice after the occurrence of any such event of default and stating the intention of such party on a date specified in such notice, to terminate Installment Grant Payments. Notwithstanding such notice, this Agreement and the Grant Term shall not be terminated, if:

(a) such event of default can be cured by the payment of a fixed monetary amount and Leasehold Mortgagee shall make such payment within thirty (30) days after the date such notice is given; or

(b) such event of default can be cured with the exercise of reasonable diligence by Leasehold Mortgagee after obtaining possession of the Development, and Leasehold Mortgagee or Leasehold Mortgagee's designee, within ninety (90) days after the date of such notice, obtains the interest of NDA in the Lease or Leasehold Mortgagee commences such proceedings (including, but not limited to, the filing of a petition for the appointment of a receiver) as it may deem necessary to obtain such possession (except that if Leasehold Mortgagee is precluded, notwithstanding the filing of a petition to the bankruptcy court for a waiver, from instituting or proceeding with such foreclosure by reason of a bankruptcy or insolvency proceeding filed by or against NDA, said ninety (90) day period shall be extended by a period of time equal to the period during which Leasehold Mortgagee is so precluded from instituting or proceeding with such foreclosure) and thereafter diligently prosecutes such action and promptly upon obtaining such possession (or promptly upon its designee obtaining such possession) thereupon promptly commences (or its designee commences), and thereafter diligently pursues, the curing of such event of default; or

(c) such event of default is not capable of being cured by Leasehold Mortgagee, even if possession of the Development were obtained by Leasehold Mortgagee or its designee, and Leasehold Mortgagee, within ninety (90) days after the date such notice is given, either obtains Lessee's rights and interests in and to this Lease and this Agreement (or Leasehold Mortgagee's designee obtains such interest) or publishes any required notice of foreclosure or institutes foreclosure proceedings, as the case may be, and thereafter proceeds with diligence to

acquire (or have its designee acquire) the interest of NDA in the Lease (except that if Leasehold Mortgagee is precluded from instituting or proceeding with such foreclosure by reason of a bankruptcy or insolvency proceeding filed by or against Lessee, said ninety (90) day period shall be extended by a period of time equal to the period during which Leasehold Mortgagee is so precluded from instituting or proceeding with such foreclosure), and such event of default, to the extent that the same shall have occurred prior to such acquisition of the interest of NDA in the Lease by Leasehold Mortgagee or its designee, shall thereupon be deemed to have been waived.

(d) The provisions of this Section 9.1.2 and Section 9.1.3 are intended to provide a Leasehold Mortgagee with rights and protections and are not intended to imply that the City and/or the Authority have the right or power to terminate this Agreement as a result of a default by NDA hereunder or under the Lease.

9.1.3 In the event of the termination of this Agreement prior to its stated expiration date, the Authority and the City shall give Leasehold Mortgagee notice of such termination and shall enter into a new agreement or, at the request of Leasehold Mortgagee, with an assignee, designee, or nominee of Leasehold Mortgagee for the remainder of the Grant Term effective as of the date of such termination, at the rate and upon the same covenants, terms, provisions and limitations as are herein contained, provided that Leasehold Mortgagee comply with all of the requirements of Section 16.3.3 of the Lease and the obligations of NDA under this Agreement.

9.1.4 If NDA shall furnish the City and the Authority with a written notice setting forth the name and address of a Leasehold Mortgagee, the City and the Authority shall thereafter send to such Leasehold Mortgagee a copy of any notice given to NDA under this Agreement, and no such notice shall be deemed to have been properly given unless and until a copy thereof shall have been sent to Leasehold Mortgagee at the address specified in such notice.

9.1.5 No Leasehold Mortgagee shall have any liability for the performance of any of the covenants, conditions or obligations of Lessee under this Lease Agreement unless and until such time as Leasehold Mortgagee acquires title to the leasehold estate created by the Lease.

9.1.6 The City and the Authority covenant and agree with NDA that the City and the Authority shall, at the request of NDA made from time to time and at any time, enter into a lender's rights agreement with any Leasehold Mortgagee (or potential Leasehold Mortgagee) identified by NDA, which lender's rights agreement shall be consistent with the terms and provisions contained in this Article 9 and Article 16 of the Lease that apply to Leasehold Mortgagees and Leasehold Mortgages. Within thirty (30) days of NDA's request for a lender's rights agreement pursuant to the provisions of this Article, time being of the essence, the City and the Authority, acting through an authorized agent, shall execute and deliver to NDA such a lender's right agreement benefitting the identified Leasehold Mortgagee (or potential Leasehold Mortgagee) and such Leasehold Mortgagee's Leasehold Mortgage (or potential Leasehold Mortgagee's potential Leasehold Mortgage), which executed lender's rights agreement shall be in a form and substance that are reasonably acceptable to such Leasehold Mortgagee (or potential Leasehold Mortgagee) and that is consistent with, and at the option of such Leasehold Mortgagee (or potential Leasehold Mortgagee) incorporates, the terms and provisions of this Article 9 and Article 16 of the Lease that apply to Leasehold Mortgagees and Leasehold Mortgages (such as

the Leasehold Mortgagee notice provisions and the Leasehold Mortgagee cure rights provisions of this Article 9 and Article 16 of the Lease).

9.1.7. In the event that in connection with the closing of a Leasehold Mortgage, the Leasehold Mortgagee requires that this Agreement be modified or amended in order to meet such Leasehold Mortgagee's commercially reasonable requirements provided that the Grant, the Grant Term and Maximum Aggregate Cap are not modified, the Authority and the City, within fifteen (15) days of the date that NDA provides the Authority and the City with a proposed amendment to this Agreement that incorporates such commercially reasonable requirements, time being of the essence, shall execute and deliver to NDA such amendment, provided such amendment is in a form and substance that is reasonably satisfactory to the Authority and the City.

X. No Default

10.1 Anything in the foregoing Agreement to the contrary notwithstanding, the obligations of the City and the Authority to make the payments required hereunder are conditioned on the satisfaction by NDA or Leasehold Mortgagee or its assignee, designee or nominee of the conditions to the Initial Advance contained in Section 6.1 hereof. Once such conditions have been satisfied, the obligation to make such payments in accordance with the terms of this Agreement shall be unconditional regardless of any alleged or actual default by NDA of any of its obligations hereunder or under the Lease.

XI. General Matters

11.1 Assignment. In addition to Article 9 of this Agreement, NDA shall have the right to assign its rights under this Agreement to any Qualified Assignee, as that term is defined in the Lease, provided NDA gives notice of such assignment to the Authority. After such notice is given, the parties may deal exclusively with the assignee named in such notice. The City and the Authority may not assign their rights hereunder without the prior written consent of NDA and any Leasehold Mortgagee, which consent neither NDA nor any Leasehold Mortgagee shall be required to give.

11.2 No Discrimination. The parties agree not to discriminate, in carrying out this Agreement or the Lease, against any employee or applicant for employment because of race, color, religion, sex, age or national origin and agree to take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to race, color, religion, sex, age or national origin. Such action shall include, but not be limited to employment, promotion, demotion, termination, rates of pay, other compensation and selection for training including apprenticeship.

11.3 Subcontracting. The Authority and the City may subcontract without one another's prior approval for services essential to undertaking and carrying out their respective responsibilities under this Agreement and the Lease. Either party so doing shall be responsible to the parties hereto for the actions or omissions of its subcontractors and of persons either directly or indirectly employed by them and for the acts and omissions of persons directly employed by it, and at the time such subcontracting shall provide such bonds or insurance

coverage as may be provided for in the Agreement or Lease or otherwise agreed upon by the parties.

11.4 Cooperative Use of Personnel. The City and the Authority agree to make their respective personnel available to either party in such manner as may be mutually determined to be in the best interest of furthering expeditious and effective funding of the Grant.

11.5 Binding Agreement. This Agreement shall be fully binding on the heirs, successors and permitted assigns to any of the parties to this Agreement.

11.6 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

11.7 Waiver of Jury Trial. The parties hereto do hereby waive trial by jury in any action, suit, proceeding, and/or counterclaim brought by any of the parties hereto against any of the others on any matters whatsoever arising out of or in any way connected with this Agreement, including any claim of injury or damage, and/or statutory remedy.

11.8 Applicable Law & Litigation. This Agreement shall be construed under and shall be governed by the laws of the Commonwealth of Virginia. The parties consent to the diversity jurisdiction of the federal courts and agree to not seek to remove from the federal court. In the event that diversity jurisdiction ends or the federal court otherwise declines to hear a dispute arising under this Agreement, the parties agree to the state courts in Richmond, Virginia as the appropriate venue.

11.9 Estoppel Certificates. The City and the Authority, at any time and from time to time, upon not less than thirty (30) days prior written notice from NDA, or to a person designated by NDA, such as a tenant or a Leasehold Mortgagee of Lessee, shall execute, acknowledge, and deliver to the party requesting such statement, a statement in reasonably acceptable form to the requesting party certifying, among other matters, (a) that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (b) stating whether or not, to the best knowledge of the signer of such certificate, any party is in breach and/or default in performance of any covenant, agreement, or condition contained in this Agreement and, if so, specifying each such breach and/or default of which the signer may have knowledge, and (c) any other factual matters reasonably requested in such estoppel certificate, it being intended that any such statement delivered hereunder may be relied upon by the party requesting such statement and/or any person not a party to this Agreement (if such other person is identified at the time such certificate was requested).

11.10 Waiver. The failure by any party to insist upon strict performance of any of the terms or provisions of this Agreement or to exercise any option, right or remedy contained in this Agreement, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy. No waiver by any party of any term or provision of this Agreement shall be deemed to have been made unless expressed in writing and duly signed by

such party.

11.11 Severability. If any clause or provision of this Agreement is or becomes illegal, invalid or unenforceable because of present or future laws or any rule or regulation of any governmental body or entity, to any extent, then the remaining parts of this Agreement shall not be affected and shall be enforceable to the fullest extent permitted by law.

11.12 Opinion of Counsel. Prior to the Effective Date of this Agreement the City and the Authority shall each furnish to NDA an opinion of counsel, in form and substance reasonably acceptable and customary in like transactions, as to the due authorization of the execution of this Agreement and the enforceability of this Agreement against the City and the Authority.

11.13 Interpretation. For the purpose of construing this Agreement, unless the context indicates otherwise, words in the singular number shall be deemed to include words in the plural number and vice versa, words in one gender shall be deemed to include words in other genders, and the word "person" shall be deemed to include a corporation or partnership. Headings or Articles and Sections are inserted only for convenience and are not, and shall not be deemed a limitation on the scope of the particular Articles or Sections to which they refer.

11.14 Development Name. In the event that the Development identified in this Agreement is given a different name at a point subsequent to the Effective Date of this Agreement, all provisions of this Agreement shall continue to apply and the new name shall be considered as automatically substituted herein without need for modification or amendment by the parties hereto.

11.15 Notices. All notices or other communications required or desired to be given with respect to this Agreement shall be in writing and shall be sufficiently given or delivered if dispatched by either (a) certified mail, postage prepaid, return receipt requested, (b) nationally recognized overnight delivery service (next business day service), or (c) hand-delivery (if receipt is evidenced by a signature of the addressee or authorized agent), and addressed to the applicable parties as follows.

To the Authority: Norfolk Redevelopment and Housing Authority
201 Granby Street
Norfolk, VA 23510
Attention: Shurl Montgomery, Executive Director

Copy to: Crenshaw, Ware & Martin, P.L.C.
150 West Main Street #1500
Norfolk, VA 23510
Attention: Delphine G. Carnes, Esq.

To the City: City Manager
City of Norfolk
1100 City Hall Building
810 Union Street

Norfolk, VA 23510

Copy to: Norfolk City Attorney
900 City Hall Building
810 Union Street
Norfolk, VA 23510

To NDA: Norfolk District Associates, LLC
601 East Pratt Street, 6th Floor
Baltimore, Maryland 21202
Attention: President

Copy to: Norfolk District Associates, LLC
601 East Pratt Street, 6th Floor
Baltimore, Maryland 21202
Attention: General Counsel

11.16 Third Party Beneficiary. It is understood between the parties that Cordish and any Leasehold Mortgagee, but no others have third party rights created pursuant to the terms of this Agreement.

11.17 Attorneys' Fees. In any judicial proceedings between the parties in connection with this Agreement, the prevailing party shall be entitled to reimbursement of its reasonable attorneys' fees and court costs.

11.18 Entire Agreement. This Agreement, including recitals constitutes the entire agreement between the parties with respect to the subject matter hereof, supersedes all prior understandings and writings and may be amended or modified only by a writing signed by the parties hereto. In the event of a conflict between the terms of this Agreement and the Lease, the terms of this Agreement shall govern and control.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK. SIGNATURES
ON FOLLOWING PAGES.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates written below their respective duly authorized signatures and seals, the later of such dates being hereby defined as the "Effective Date" of this Agreement:

CITY OF NORFOLK

By: _____
Marcus D. Jones
City Manager

ATTEST:

City Clerk

**NORFOLK REDEVELOPMENT AND
HOUSING AUTHORITY**

By: _____
Shurl R. Montgomery
Executive Director

APPROVED AS TO FORM:

Counsel to the Norfolk Redevelopment
And Housing Authority

APPROVED AS TO CONTENTS:

Assistant City Manager

APPROVED AS TO FORM & CORRECTNESS:

City Attorney

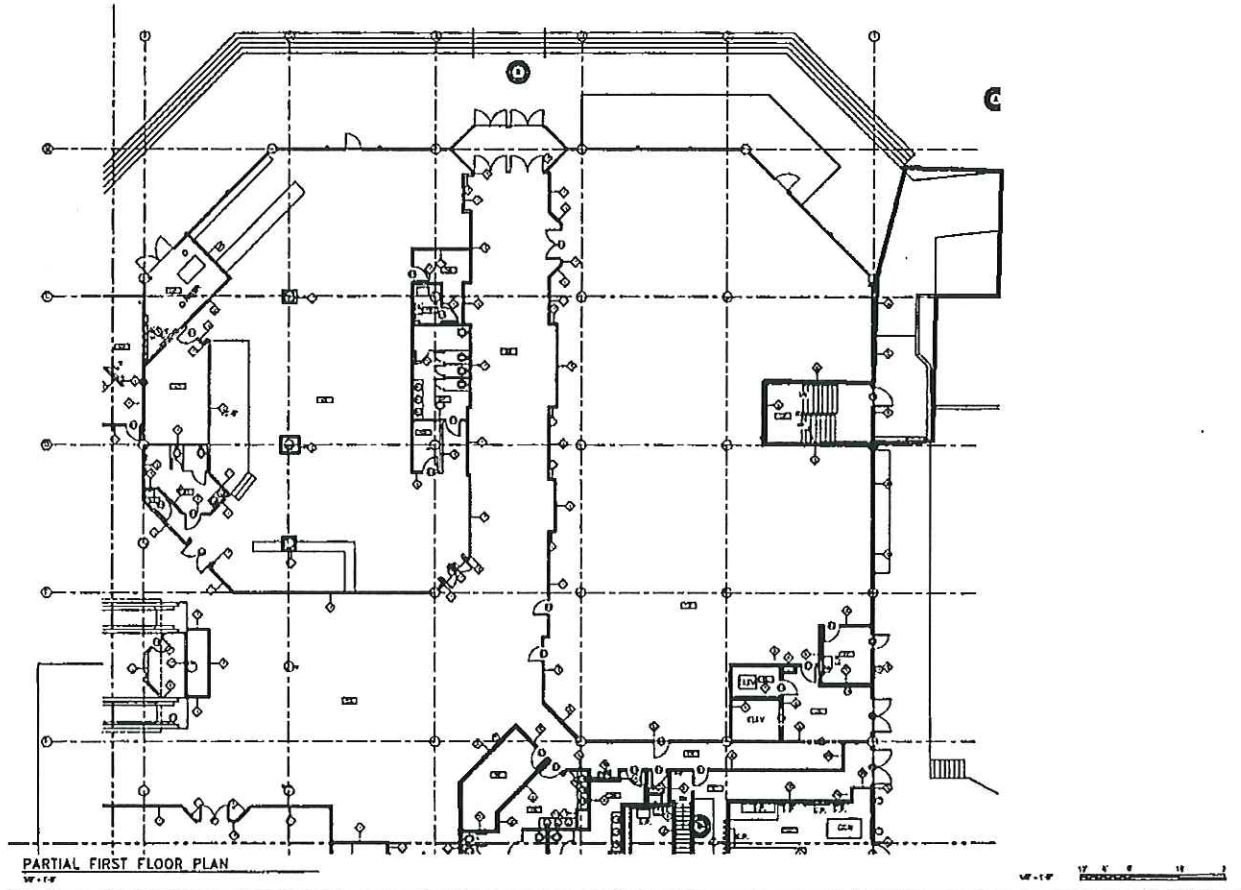
**NORFOLK DISTRICT ASSOCIATES,
LLC**, a Maryland limited liability company

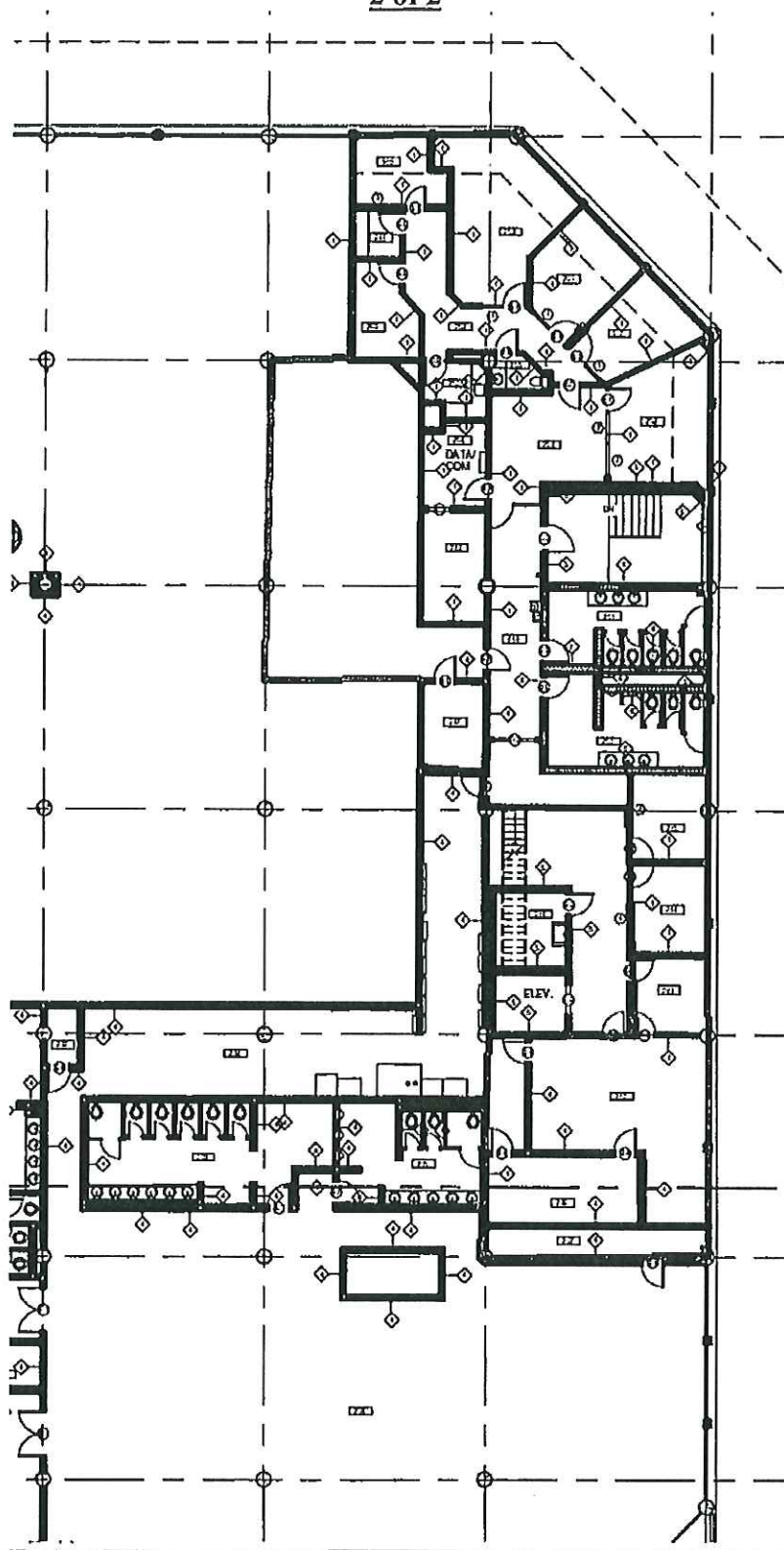
By: Cordish Enterprises, LLLP,
Its Managing Member

By: _____
Jonathan A. Cordish
General Partner

EXHIBIT "N"

Management Offices 1 of 2





Second Floor

EXHIBIT "O"

Litigation

None

EXHIBIT "P"

Violations of Law

None

EXHIBIT "Q"

Notices

None

EXHIBIT "R"

Notices

None

EXHIBIT "S"

Leases and Other Occupancy Agreements

Lease dated April 11, 1997, as amended by a First Amendment dated March 2001 and a Second Amendment dated July 7, 2006 by and between Waterside Associates and Virginia Wings of Waterside.

Lease dated April 14, 1998 by and between Waterside Associates Limited Partnership and Landry's Seafood House-Norfolk, Virginia, Inc. There is also a purported notice dated February 27, 2013 from Ignite Restaurant Group.

Lease dated February 26, 1999, as assigned, by and between Outback Steakhouse of Florida, LLC and Waterside Associates Limited Partnership.

Rental Agreement for Laundry Services dated July 16, 1997.

WATERSIDE GARAGE PARKING EASEMENT AND AGREEMENT

THIS WATERSIDE GARAGE PARKING EASEMENT AND AGREEMENT (this "Agreement"), made and entered into as of this ____ day of _____, 2013 (the "Effective Date"), by and between **NORFOLK REDEVELOPMENT AND HOUSING AUTHORITY**, a duly organized and existing political subdivision of the Commonwealth of Virginia (the "Authority") and **NORFOLK DISTRICT ASSOCIATES, LLC**, a Maryland limited liability company ("Developer").

RECITALS:

A. Under the leadership of the City Council, the City of Norfolk has sought the revitalization of "The Waterside", a restaurant and entertainment development that is located on a tract of real estate legally described in Exhibit "A" (the "Project Parcel"), so as to invigorate the Downtown and prevent the recurrence of blight.

B. Both the City and the Authority requested proposals from private entities for the redevelopment of the Project Parcel.

C. The City and the Authority selected the proposal by The Cordish Companies, a Maryland corporation, to implement, design, construct, equip and operate, on the Project Parcel, a concept referred to as Waterside Live! (as same may be modified from time to time in accordance with the terms of the Lease Agreement, the "Project").

D. The Authority has entered into a Deed of Lease and Development Agreement (as same may be amended from time to time, the "Lease Agreement") with the Developer, an affiliate of The Cordish Companies, for the Project Parcel.

E. Developer's performance under the Lease Agreement is conditioned upon the Authority entering into this Agreement for the benefit of Developer and its successors and assigns concerning the Waterside Garage (the "Garage"), a parking garage containing 561 parking spaces that is located at 50 Martin's Lane, Norfolk, Virginia on that certain tract of real estate legally described in Exhibit "B" (the "Garage Parcel").

F. The Authority and the Developer are each willing to enter into this Agreement.

GRANT OF PARKING RIGHTS:

NOW, THEREFORE, for good and valuable consideration received by each of the parties to this Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Defined Terms. Except where the context or use clearly indicates another or different meaning or intent, when capitalized, the following terms used in this Agreement shall have the meanings ascribed to them as follows:

(a) "Affiliate" means any person or entity that controls an entity, that is controlled by an entity, or that is under common control with an entity.

(b) "Disposition" means a sale, lease, assignment, grant or other transaction pursuant to the terms of which all, or any part, of the rights granted to Developer hereunder is passed on to another person or entity.

(c) "Market Rate" means the applicable rate, including a monthly, daily and hourly rate, that is comparable to the rate being paid at the applicable time and day by other users of parking spaces in parking facilities owned by the City and any agency thereof as long as the City and any agency thereof owns at least ten parking facilities in the City of Norfolk. In the event that the City and any agency thereof owns less than ten parking facilities in the City of Norfolk, the Market Rate shall be established by a survey to be taken on an annual basis by an appraiser mutually acceptable to the City and Developer. In the event the Authority and the Developer cannot agree upon an appraiser, each will choose one and if the respective appraisers cannot agree, they shall choose a third whose calculation of market rate shall be used.

(d) "Mortgage" means, with respect to the Project Parcel (or any portion thereof) and any improvements situated thereon (or any portion thereof), a mortgage, deed of trust (whether securing a direct obligation or a guaranty of obligations in connection with a loan secured by an indemnity deed of trust or mortgage), deed to secure debt, security deed, indenture, sale-leaseback documents, lease-leaseback documents, or any other instrument securing payment of a debt that encumbers Developer's interest in the Project Parcel and any improvements situated thereon (or an interest therein or portion thereof).

(e) "Mortgagee" means (i) the holder of, or beneficiary under, a Mortgage, (ii) in the case of a sale-leaseback transaction, the owner of the reversionary estate, or (iii) otherwise, the person or entity to whom all or any part of the interest of Developer in the Project Parcel (or an interest therein) or any improvements situated thereon (or an interest therein) is transferred as security under a Mortgage. Such term shall also include any person or entity that obtains title to all or any portion of the rights granted to Developer hereunder as a result of the Mortgagee's exercise of its foreclosure rights or the transfer of title to the rights granted to Developer hereunder at the direction of the Mortgagee by Developer to a person or entity by a deed-in-lieu of foreclosure.

(f) "Permitted Garage Users" means those persons and entities who are permitted to use Developer's Spaces pursuant to this Agreement, which persons and entities shall be Developer, its Affiliates, and their respective employees, agents, customers and invitees, and the Tenants, and their respective employees, agents, customers and invitees.

(g) "RFP" means a request for proposals issued by Authority to potential Parking Operators for the operation of the Garage pursuant to which the Authority intends to select a Parking Operator to operate the Garage based upon such Parking Operator having the lowest best bid.

(h) "Substantial Completion Date" means the date upon which Substantial Completion (as that term is defined in the Lease) has occurred.

(i) "Tenant" means any tenant, subtenant, sub-subtenant, licensee, concessionaire, occupant, or other user of any part of the Project or any other improvements situated on the Project Parcel.

Except where the context or use clearly indicates another or different meaning or intent, the other capitalized terms used in this Agreement shall have the meanings ascribed to them in the opening paragraph, recitals, or other sections of this Agreement where such meanings are ascribed.

2. Term. The term of this Agreement and the term of the rights granted to Developer hereunder with respect to the Garage (the "Term") shall commence on the date selected by Developer and provided to the City by notice, which date shall be after the Substantial Completion Date and shall end on the date of the expiration or early termination of the Lease, provided, however, the Term shall continue if any replacement Lease is entered into pursuant to the provisions of Section 16.3.3 of the Lease.

3. Grant of Parking Rights and Conditions of Usage.

(a) During the Term, the Authority hereby grants to Developer the right, on an exclusive basis (but subject to any Holdovers, as hereinafter defined) to utilize Five Hundred Sixty One (561) parking spaces in the Garage between the hours of 6:00 p.m. and 11:59 p.m. on Fridays and Saturdays and between the hours of 12:00 a.m. (midnight) and 6:00 a.m. on Saturdays and Sundays (the "Exclusive Use Period") for self-parking and/or valet parking for motor vehicles operated by Permitted Garage Users and, at the election of Developer, the general public. Commencing on the first day of the first full calendar month of the Term, Developer shall pay the Authority Nine Thousand One Hundred Fifty and 00/100 Dollars (\$9,100.00) a calendar month for such parking spaces. This monthly fee shall increase every five (5) years of the Term by One Thousand One Hundred Thirty-Seven and 50/100 Dollars (\$1,137.50) a calendar month. The Authority shall not grant permission to monthly parkers to remain during the Exclusive Use Period. Notwithstanding the above, monthly parkers may from time to time fail to exit by the required time ("Holdovers"). Developer's grant is subject to these Holdovers, provided that the Authority shall use commercially reasonable efforts to minimize any Holdovers, which shall not include towing. Developer's grant is likewise subject to members of the public who park in the Garage during a time outside of the Exclusive Use Period as short term parkers and remain parked in the Garage during the Exclusive Use Period. Developer shall have no other independent monetary or other obligation to the City for the availability or the use of such parking spaces or the Garage during the Exclusive Use Period. Developer shall have the exclusive right, subject to applicable law and the Rules (as that term is hereinafter defined in Section 5 hereof), to establish and modify, from time to time, the terms and conditions of use of the Garage by parkers during the Exclusive Use Period, including the rate charged for parking in the Garage during the Exclusive Use Period, permitting persons that are not Permitted Garage Users to utilize the Garage and the mix between self-park parking spaces and valet parking spaces. Developer shall have the right, from time to time, to implement, modify or suspend a parking validation system that permits Permitted Garage Users that have a validated parking ticket to park at a reduced rate during the Exclusive Use Period. In addition,

Developer shall have the right, from time to time, to implement, modify or suspend a valet parking service that utilizes the Garage during the Exclusive Use Period. Provided it does not cause material additional expense to the Authority or the operator of the Garage, the Authority shall cause the operator of the Garage to implement Developer's policies for the Friday and Saturday Evening Spaces, including the creation and maintenance of a valet only parking field in the Garage. The Authority agrees that pricing changes, the implementation and operation of a validation program and the establishment and maintenance of a valet parking field within the Garage shall not be deemed to "cause material additional expense to the Authority". All gross revenue generated from the parking of vehicles that enter the Garage during the Exclusive Use Period shall belong to and be remitted to Developer on or before the tenth day of each calendar month of the Term. The Authority shall prepare and maintain accurate and complete records of the availability of parking spaces in the Garage during the Exclusive Use Period. Developer, and its designated agents, shall be entitled to examine and copy such records, during regular business hours, at City Hall in Norfolk, Virginia.

(b) During the Term, the Authority hereby grants to Developer the right, on an exclusive basis (but subject to any Holdovers), to utilize up to Five Hundred Sixty One (561) parking spaces in the Garage between the hours of 6:00 p.m. and 11:59 p.m. on Sundays, Mondays, Tuesdays, Wednesdays and Thursdays and the period between the hours of 12:00 a.m. (midnight) and 6:00 a.m. on Mondays, Tuesdays, Wednesdays, Thursdays and Fridays (the "Valet Period") for the valet parking of automobiles. The actual number of parking spaces to be made available to Developer for each night of the Valet Period shall initially be determined and set by Developer by written notice provided to the Authority. In no event shall the number of these reserved valet spaces be less than 100. Such written notice shall be sent to the Authority at least ten (10) days prior to the commencement of Developer's valet operations at the Garage during the Valet Period. Thereafter, on at least seven (7) days prior notice, Developer shall have the right, from time to time, to modify the actual number of parking spaces to be made available to Developer for each night of the Valet Period. Developer shall have the right to designate the location of such parking spaces in the Garage. It is the intent of the parties that the actual number of parking spaces utilized during each night of the Valet Period shall be limited to the number of parking spaces that Developer reasonably expects to be utilized by the valet parking service for such night. The Authority and its operator of the Garage shall cooperate with the Developer in order to enable Developer to operate (or cause to be operated) an efficient, customer friendly, valet parking service. Developer has no obligation to operate or cause to be operated a valet parking service. During the Valet Period, no payment shall be required upon the entry or exit to and from the Garage of vehicles utilizing Developer's valet parking service. During the Term Developer shall pay the Authority \$2.00 for each parking space reserved by Developer during each night of the Valet Period during such calendar month. A parking space may be utilized by Developer more than once a night, however, Developer shall only be obligated to pay the City \$2.00 for such parking space for such night. The amount due and payable by Developer for parking spaces in the Garage utilized by Developer during the Valet Period shall be payable monthly within ten (10) days after presentation by the Authority to Developer of an invoice for each month's usage. The rate shall increase by 25 cents (25¢) per parking space reserved every five (5) years of the Term. The

Authority shall prepare and maintain accurate and complete records of the use of such spaces. Developer, and its designated agents, shall be entitled to examine and copy such records, during regular business hours, at City Hall in Norfolk, Virginia. Developer shall have no other independent monetary or other obligation to the Authority for the availability or the use of such parking spaces or the Garage during the Valet Period for its valet parking service.

(c) Subject to the provisions of Section 3 (a) and (b) hereof and the other provisions of this Agreement, during the Term the Garage shall be open at all times as a public parking facility. The Permitted Garage Users shall have the same right to park in the Garage as the general public. The Authority shall charge Market Rates for the use of such parking spaces. The Authority shall limit the number of monthly parking passes issued for the Garage to three hundred fifty (350). Any such monthly parking pass shall prohibit the holder of such pass, as a benefit of holding such pass, the right to park in the Garage during the Exclusive Use Period and shall grant the Authority the right to assess a penalty, in an amount reasonably acceptable to Developer, for violating such prohibition.

4. Rights of Ingress and Egress. During the Term, the Authority hereby grants to Developer a non-exclusive easement for the Permitted Garage Users to use Garage ramps, aisle ways, driveways, entrances, entrance ways, exits, exit ways, escalators, elevators, elevator lobbies, and stairways (all of which are hereinafter collectively referred to as the "Garage Common Areas") utilized in connection with the Garage for the purpose of providing pedestrian and vehicular access in and to the parking spaces made available to Developer pursuant to this Agreement.

5. Rules and Regulations. The Authority may adopt reasonable rules and regulations for operation of the Garage ("Rules") and may change or supplement the Rules; provided, however, the Rules shall be consistent with this Agreement and the Rules shall be enforced and applied fairly to all users of the Garage.

6. Maintenance and Weather Events. Throughout the Term, the Authority, at no cost to Developer or the Tenants, shall maintain the Garage, including the Common Areas in a good condition and repair. The Authority shall keep the Garage, including the Common Areas in a clean and neat condition throughout the Terms. The Garage and its Common Areas or portions thereof may be closed for maintenance and repair or for parking during extreme weather events when the City is permitting free parking to its citizens to avoid cars flooding. The Authority shall keep the Developer informed of its maintenance and repair plans for the Garage and will use commercially reasonable efforts to minimize any partial or total closure of the Garage. At the request of Developer, the Authority shall provide Developer with alternative replacement parking spaces that are in reasonably close proximity to the Garage during any period of partial or total closure of the Garage. The Authority shall use commercially reasonable efforts to undertake and complete all repairs and maintenance of the Garage in an expeditious manner and shall use its best efforts to keep the entire Garage open on Friday and Saturday nights.

7. Hours of Operation. The Authority shall keep the Garage open for use by the Permitted Garage Users at all times; provided, however, that, notwithstanding anything herein

to the contrary, the Authority may restrict entry and exit to and from the Garage by use of gated entry and exit devices.

8. Additional Obligations of the City. During the Term, the Authority shall:

(a) Provide lighting at least equal to the current level of lighting provided in the Garage;

(b) comply with all applicable laws, rules, ordinances, regulations and other governmental requirements that presently exist or that may hereinafter be enacted or promulgated by any governmental agency or authority having jurisdiction over the Garage, including, but not limited to, all laws, rules, ordinances, regulations and other governmental requirements relating to hazardous substances;

(c) pay, prior to delinquency, any and all real estate taxes and assessments, general or special, levied or imposed with respect to the Garage;

(d) pay all sales, use, and all other taxes and fees imposed upon the parking spaces utilized by Developer or the Permitted Garage Users pursuant to Section 3 (a) and (b) hereof;

(e) insure the Garage against loss or damage by fire and such other hazards and risks as are customarily covered by an all risk policy of property insurance, on a full replacement cost basis, such insurance to be issued by an A.M. Best rating of B+, V or better insurer. At the written request of Developer, the Authority shall promptly provide evidence that the insurance required hereunder is in full force and effect. Any such insurance policies shall contain an endorsement providing that the insurance coverage shall not be prejudiced if the insured has waived its rights of recovery, including subrogation rights (as waived in Section 36 hereof), against any person or entity prior to the date of such loss, destruction or damage; and

(f) self-insure in accordance with its usual risk management policies or, as the Authority elect, maintain public liability insurance against claims for personal injury, death or property damage arising from the ownership, use, maintenance or operation of the Garage, each policy of public liability insurance shall provide single limit coverage in an amount not less than Two Million Dollars (\$2,000,000). In the event the Authority elects to maintain public liability insurance, such policies shall name Developer and Developer's lenders as additional insureds. At the written request of Developer, the Authority shall promptly provide evidence that the insurance required hereunder is in full force and effect. During the Term, the combined single limit of Two Million Dollars (\$2,000,000) shall be increased by ten percent (10%) for each ten percent (10%) increase in the monthly "U.S. City Average, All Items" Consumer Price Index for All Urban Consumers (not seasonally adjusted) Base 1982-1984 = 100 (the "CPI-U"), as last published by the United States Department of Labor, Bureau of Labor Statistics, prior to March 1 of any year as compared with the CPI-U as last published prior to March 1, 2005. No adjustment shall be made in the combined single limit until the increase in the CPI-U reaches ten percent (10%) and no further adjustments shall be made until the

increases in the CPI-U reach additional multiples of ten percent (10%). In the event that the CPI-U ceases to incorporate a significant number of items, or if a substantial change is made in the method of establishing such CPI-U, then the CPI-U shall be adjusted in a fair and reasonable manner to the figure that would have resulted had no substantial change occurred in the manner of computing such CPI-U. In the event that such CPI-U (or a successor or substitute index) is not available, such governmental or other service or publication as shall evaluate the information in substantially the same manner as the aforesaid CPI-U shall be used in lieu thereof.

9. Damage or Destruction by Fire or Other Casualty. In the event that, during the Term, the Garage shall be damaged by fire or other casualty, this Agreement shall continue in full force and effect and the Authority shall repair the Garage with all reasonable diligence, placing the same in substantially the same condition as it was at the time of such damage. During any time that any parking spaces in the Garage are unavailable as a result of such damage, the Authority shall use reasonable efforts to provide replacement spaces that are in close proximity to the Project.

10. Condemnation. If, during the Term, all or a substantial part of the Garage shall be condemned by any authority having the power of eminent domain, or transferred in lieu thereof, the Authority shall promptly replace the Garage with a garage of comparable location and size and Developer's rights in the condemned Garage shall be transferred to the replacement garage that is in close proximity to the Project.

11. The City' Financial Obligations Subject to Appropriations. The Authority and Developer acknowledge and agree that all obligations imposed by this Agreement to expend funds in the future are subject to the appropriation of funds by the Authority at the time such funds are needed; provided, however, that, if the Authority fails to perform any of its obligations hereunder, the Authority 's failure to appropriate funds shall not excuse such failure to perform, and any such failure by Authority to perform its obligations hereunder shall subject the Authority to the remedies set forth in Section 12 hereof.

12. Breach; Remedies. In addition to any other remedies available at law or in equity, if, at any time, a party to this Agreement shall fail to perform its obligations hereunder (a "Breaching Party"), and such failure shall continue for a period of thirty (30) days after written notice of such failure is given to such Breaching Party, then the other party (the "Non-Breaching Party") may, at its option, cure such failure and, thereupon, upon demand, such Breaching Party shall immediately reimburse such Non-Breaching Party for any and all costs and expenses paid by such Non-Breaching Party in curing the failure of the Breaching Party. Each of the parties hereto agrees and acknowledges that any failure of either party to perform its obligations hereunder may result in irreparable harm to such Non-Breaching Party and such Non-Breaching Party shall be entitled to exercise all rights and remedies available at law, in equity, or under this Agreement.

13. Right to Pledge. Developer shall at all times have the right to pledge its interests in this Agreement to a Leasehold Mortgagee (as that term is defined in the Lease) in connection with a financing of the Project. The provisions of Section 16 of the Lease are hereby incorporated into this Agreement, *Mutatis Mutandis*.

14. Binding Effect. This Agreement shall inure to the benefit of, and shall be binding upon, the Authority and Developer and their respective successors and assigns. Each of the covenants, terms and agreements set forth herein shall be a burden upon, and run with, the land with respect to which each such covenant, term and agreement relates, and shall benefit, and be appurtenant to, the Project Parcel.

15. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia.

16. Time of the Essence. Time and exact performance are of the essence under this Agreement.

17. Notices. All notices shall be sent either by certified mail, return receipt requested, personal messenger or overnight delivery via a reputable overnight service. Any notice sent by (a) certified mail, return receipt requested shall be deemed delivered two (2) days after deposited in the United States mail; (b) personal messenger shall be deemed delivered when actually received; and (c) an overnight delivery service shall be deemed delivered on the business day following the date the notice is deposited with the overnight delivery service addressed as specified below:

If to the Authority: Norfolk Redevelopment and Housing Authority
 201 Granby Street
 Norfolk, VA 23510
 Attention: Shurl Montgomery, Executive Director

With a copy to: Crenshaw, Ware & Martin, P.L.C.
 150 West Main Street #1500
 Norfolk, VA 23510
 Attention: Delphine G. Carnes, Esq.

If to Developer: Norfolk District Associates, LLC
 601 East Pratt Street
 Sixth Floor
 Baltimore, Maryland 20201
 Attention: President

With a copy to: Norfolk District Associates, LLC
 601 East Pratt Street
 Sixth Floor
 Baltimore, Maryland 20201
 Attention: General Counsel

Such addresses may be changed by giving the other party ten (10) days notice in writing.

18. Severability. If any term, covenant, condition, or provision of this Agreement, or the application to any person or circumstance shall, at any time or to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall (except to the extent such result is clearly unreasonable) not be affected thereby, and under such circumstances each term, covenant, condition, and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law, insofar as such enforcement is not clearly unreasonable. In case any provision in this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

19. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.

20. Entire Agreement. Except for the Lease and the other agreements executed in connection with the Lease, this Agreement incorporates all prior negotiations and discussions between the parties regarding its subject matter and represents the entire agreement of the City, and Developer for parking rights with respect to the Garage.

21. Amendment. This Agreement may not be amended or modified except by an instrument in writing executed by the party against whom enforcement of the amendment or modification is sought.

22. Headings. The captions and section headings contained in this Agreement are for convenience of reference only and shall not be considered in any interpretation of the provisions of this Agreement.

23. Venue. The City and Developer consent to the diversity jurisdiction of the federal courts and both agree to not seek to remove from the federal court. In the event that diversity jurisdiction ends or the federal court otherwise declines to hear a dispute arising under this Agreement, the City and Developer agree to the state courts in Richmond, Virginia as the appropriate venue.

24. Force Majeure. The provisions of Section 19.1 of the Lease are hereby incorporated into this Agreement, *Mutatis Mutandis*.

25. No Partnership or Joint Venture. It is mutually understood and agreed that nothing contained in this Agreement is intended or shall be construed in any manner or under any circumstances whatsoever as creating or establishing the relationship of co-partners or creating or establishing the relationship of a joint venture between the City and Developer or as constituting Developer as the agent or representative of the City for any purpose or in any manner under this Agreement, it being understood that Developer is an independent contractor hereunder.

26. Representatives Not Individually Liable. No member, official, representative, or employee of the City shall be personally liable to Developer or any successor in interest in the event of any default or breach by the City for any amount that may become due to Developer or successor or on any obligations under the terms of the Agreement. No partner, member, representative, or employee of Developer or any of its members shall be personally liable to the City in the event any default or breach by Developer for any amount that may become due to the City or on any obligations under the terms of this Agreement.

27. Broker. The City and Developer each represent and warrant for itself that it has not dealt with any broker in connection with this Agreement and each covenants and agrees to indemnify and hold the other harmless from and against any claim, cost, liability, or expense (including reasonable attorney's fees) arising or resulting from a breach of this warranty.

28. Third Party Beneficiary. Nothing contained in this Agreement shall be construed to confer upon any other party the rights of a third party beneficiary.

29. Payment or Performance on Saturday, Sunday, or Holiday. Whenever the provisions of this Agreement call for any payment or the performance of any act on or by a date that is a Saturday, Sunday, or legal holiday of the Commonwealth of Virginia, including the expiration date of any cure periods provided herein, then such payment or such performance shall be required on or by the immediately succeeding day that is not a Saturday, Sunday, or legal holiday of the Commonwealth of Virginia.

30. Incorporation into Agreement and Recitals. The recitals set forth above are true and correct and are incorporated herein by reference and made a part of this Agreement. Unless otherwise provided herein, all exhibits attached hereto are incorporated herein by reference.

31. Conflict of Terms. It is the intention of the City and Developer that if any provision of this Agreement is capable of two constructions, only one of which would render this provision valid and enforceable, then the provision shall have the meaning that renders it valid and enforceable.

32. No Waiver. No failure on the part of the City or Developer to enforce any covenant or provision contained in the Agreement nor any waiver of any right under this Agreement shall discharge or invalidate such covenant or provision or affect the right of the other party to enforce the same in the event of any subsequent default.

33. Recording Memorandum. Upon the Effective Date, the parties shall execute and record in the public real estate records a memorandum of agreement in recordable form regarding this Agreement.

34. Waiver of Subrogation. In the event that all or any part of the Garage, including, but not limited to, any buildings, improvements or personal property, is damaged or destroyed by fire or other casualty, the rights or claims of the City and Developer, their employees, agents, successors or assigns, as against each other with respect to liability for such loss, destruction or damage resulting therefrom, including loss, destruction or damage suffered as a result of the negligence of either or their employees or agents, is hereby released and

discharged to the extent of the amount payable by insurance, and any and all subrogation rights or claims are hereby waived to the extent of the insurance coverage carried by the City or Developer, or, in the case of the City, to the extent of any self-insurance provided hereunder by the City. The City shall use its best efforts to assure that any such insurance policies shall contain an endorsement providing that the insurance coverage shall not be prejudiced if the insured has waived its rights of recovery, including subrogation rights, against any person or entity prior to the date of such loss, destruction or damage. In the event that the endorsement to a policy acceptable to the City adds costs to the City's insurance, the City shall not be obligated to pay the added costs but shall ask the Developer to pay the added costs and in the event that the Developer is willing to pay, the City shall obtain the endorsement.

SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**NORFOLK REDEVELOPMENT AND
HOUSING AUTHORITY**

By: _____
Shurl R. Montgomery
Executive Director

APPROVED AS TO FORM:

Counsel to the Norfolk Redevelopment
And Housing Authority

NORFOLK DISTRICT ASSOCIATES, LLC, a
Maryland limited liability company,

By: Cordish Enterprises, LLLP, its Managing
Member

By _____
Jonathan A. Cordish, General Partner

STATE OF MARYLAND)
) ss.
CITY OF BALTIMORE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by
JONATHAN A. CORDISH, the General Partner of Cordish Enterprises, LLLP, the Managing
Member of Norfolk District Associates, LLC, on behalf of the company.

[SEAL] Notary Public

My commission expires: _____

LIST OF EXHIBITS

Exhibit "A" – Legal Description of Project Parcel

Exhibit "B" – Legal Description of Garage Parcel

EXHIBIT "A"

Legal Description of Project Parcel

EXHIBIT "B"

Legal Description of Garage Parcel

EXHIBIT "U"

GUARANTY OF COMPLETION

THIS GUARANTY OF COMPLETION (this "Guaranty") is made this ____ day of _____, 201__, by and between **Waterside Associates Limited Partnership**, a limited partnership organized and existing under the laws of the state of Maryland and having its address at 201 Granby Street, Norfolk, Virginia 23510 (the "Lessor"), and **The Cordish Companies**, a duly organized and existing Maryland corporation having its address at 601 East Pratt Street, Sixth Floor, Baltimore, Maryland 21202 (the "Guarantor").

RECITALS

WHEREAS; in order to induce the Lessor to enter into the Deed of Lease and Development Agreement (the "Lease Agreement") with Norfolk District Associates, LLC, the Guarantor has agreed to execute and deliver this Guaranty.

GUARANTY

NOW THEREFORE, to induce the Lessor to enter into the Lease Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby covenants and agrees as follows:

1. Provided that the Lessor is not in material default of its obligations under the Lease Agreement and the Performance Base Grant & Memorandum of Agreement are in full force and effect and are not subject to court challenge and have not otherwise indicated that Lessee will not receive the payments under the Performance Base Grant Agreement, from and after the Delivery of Possession Date Guarantor absolutely and unconditionally guarantees to the Lessor that Lessee shall cause Substantial Completion to occur in accordance with the provisions of the Lease;

2. Provided that the Lessor is not in material default of its obligations under the Lease Agreement and the Performance Base Grant & Memorandum of Agreement are in full force and effect and are not subject to court challenge, if Lessee fails to do the matters specified in Paragraph 1 on or before the time periods set forth in the Lease, immediately upon such failure to perform, Guarantor shall:

(a) cause Substantial Completion to occur;

(b) remove any lien arising from the Lessee or its efforts to cause the Substantial Completion to occur;

(c) pay all costs and expenses incurred in doing (a) or (b) of this paragraph 2, and

pay to or reimburse the Lessor for all expenses incurred by the Lessor with respect to its carrying out of obligations otherwise imposed upon Lessee under the Lease Agreement regarding (a) or (b) of this Paragraph 2.

3. The Guarantor expressly agrees that the Lessor may, in its sole and absolute discretion, without notice to or further assent of the Guarantor and without in any way releasing, affecting or impairing the obligations and liabilities of the Guarantor hereunder: (i) waive compliance with, or any defaults under, or grant any other indulgences with respect to, the Lease Agreement; (ii) modify, amend, or change any provisions of the Lease Agreement; (iii) grant extensions or renewals of or with respect to the Lease Agreement or effect any release, compromise or settlement in connection with the Lease Agreement; (iv) make advances for the purpose of performing any term or covenant contained in the with respect to the Lease Agreement which Lessee shall be in default beyond any applicable notice and cure period contained in the Lease; (v) assign or otherwise transfer this Guaranty or any interest therein or herein; and (vi) deal in all respect with Lessee as if this Guaranty were not in effect. The obligations of the Guarantor under this Guaranty shall, except as provided herein, be unconditional, absolute and irrevocable and shall continue in full force and effect until Substantial Completion, as required by the terms and conditions of the Lease Agreement.

4. Subject to the terms of this Guaranty, the liability of the Guarantor under this Guaranty shall be primary, direct and immediate and not conditional or contingent upon pursuit by the Lessor of any remedies it may have against Lessee or its successors and assigns with respect to the Lease Agreement whether pursuant to the terms thereof or by law. Without limiting the generality of the foregoing, the Lessor shall not be required to make any demand on Lessee or its successors and assigns or to pursue or exhaust its remedies against the premises or any part thereof or against Lessee or its successors and assigns before, simultaneously with or after enforcing its rights and remedies hereunder against the Guarantor. Any one or more successive or concurrent actions may be brought hereon against the Guarantor either in the same action, if any, brought against Lessee or its successors or assigns and any other guarantor in separate actions, as often as the Lessor, may deem advisable.

5. The Guarantor hereby expressly waives (i) presentment and demand for payment and protest non-payment; (ii) notice of acceptance of this Guaranty and of presentment, demand and protest; (iii) notice of any default hereunder or under the Lease Agreement; (iv) demand for observance or performance of, or enforcement of, any terms or provisions of this Guaranty or the Lease Agreement; (v) all other notices and demands otherwise required by law which the Guarantor may lawfully waive; and (vi) any defense to any action brought against Guarantor, including, without limitation, any defense based on any statute of limitations and on any legal disability of Lessee and any discharge and limitation of liability of Lessee to the Lessor whether consensual or arising by operation of law or any bankruptcy, insolvency or debtor-relief proceeding, or from any other cause. The Guarantor also waives trial by jury in any action brought on or with respect to this Guaranty and agrees that in the event this Guaranty shall be enforced by suit or otherwise, the Guarantor will reimburse the Lessor, upon demand, for all expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees.

6. If the Guarantor shall advance any sums to Lessee or its successors or assigns or if Lessee or its successors or assigns shall hereafter become indebted to the Guarantor, such sums and indebtedness shall be subordinate in all respects to the amounts then or thereafter due and owing to the Lessor under the Lease Agreement. Nothing herein contained shall be construed to give the Guarantor any right of subrogation in and to the Lease Agreement or all or any part of the Lessor's interest therein, until all amounts owing to the Lessor have been paid in full.

7. Any notice, demand, request or other communication which the Lessor may desire to give to the Guarantor with respect to this Guaranty, shall be deemed sufficient if given to Guarantor, at the address set forth above, or such other address as Guarantor may direct, in writing and in accordance with the provisions of Section 19.4 of the Lease Agreement, which is hereby incorporated into this Guaranty. Any notice from Guarantor to Lessor shall be in writing and given to Lessor in accordance with the provisions of Section 19.4 of the Lease Agreement.

8. All rights and remedies afforded to the Lessor, by reason of this Guaranty, the Lease Agreement or by law, are separate and cumulative and the exercise of one shall not in any way limit or prejudice the exercise of any other such rights or remedies. No delay or omission by the Lessor in exercising any such right or remedy shall operate as a waiver thereof. No waiver of any rights and remedies hereunder, and no modification or amendment hereof, shall be deemed made by the Lessor unless in writing and duly signed by the Lessor. Any such written waiver shall apply only to the particular instance specified therein and shall not impair the further exercise of such right or remedy or of any other right or remedy of the Lessor and no single or partial exercise of any right or remedy hereunder shall preclude other or further exercise thereof or any other right or remedy.

9. If any provision, or part of any provision, contained in this Guaranty shall for any reason be determined to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining part(s) of the provisions of this Guaranty.

10. This Guaranty shall inure to the benefit of, and be enforceable by, the Lessor, its successors and assigns, and shall be binding upon, and enforceable against, the Guarantor and its heirs, personal representatives and assigns.

11. This Guaranty shall not create any rights in any surety under payment and performance bonds, among the surety, if any, Lessee, the general contractor, and the Lessor, with respect to the Project, either as a third party beneficiary, or in any other manner, it being understood and agreed that this Guaranty is intended for the sole benefit of the Lessor, or such other party as the Lessor may designate in its sole discretion.

12. This Guaranty shall be construed under the laws of the Commonwealth of Virginia.

13. This Guaranty shall terminate upon Substantial Completion. Upon such termination, at the request of the Guarantor, the Lessor shall mark this Guaranty cancelled and return the

original of same to the Guarantor:

14. Unless otherwise defined herein, or the context otherwise requires, each capitalized term utilized herein shall have the meaning ascribed to it in the Lease Agreement.

15. The provisions of Sections 17.5, 17.6, 17.7, 17.8 and 19.14 of the Lease Agreement are incorporated herein by reference, *mutatis mutandis*.

IN WITNESS WHEREOF, the Guarantor has executed and sealed this Guaranty on the date first above written.

GUARANTOR:

THE CORDISH COMPANIES, a Maryland
corporation

By: _____

Name:

Title:

EXCLUSIVE AREA – HAMPTON ROADS

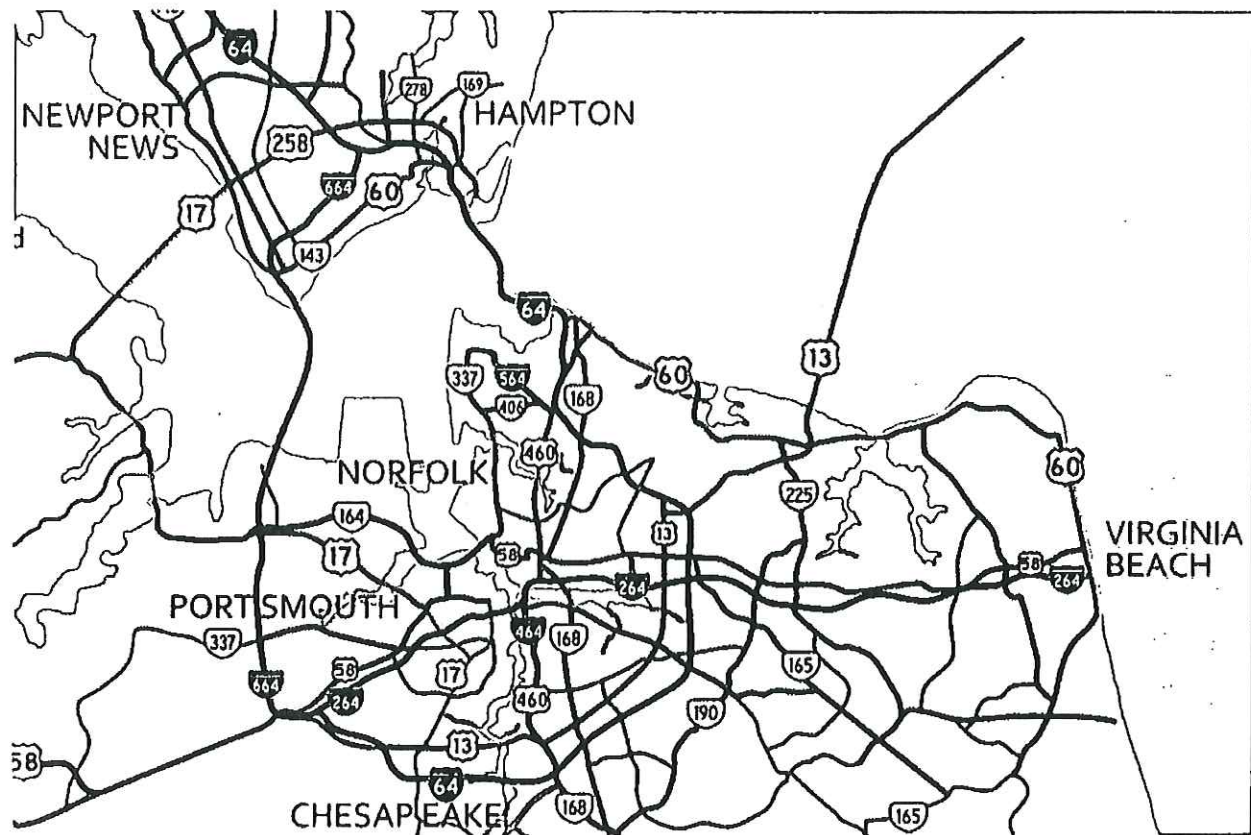
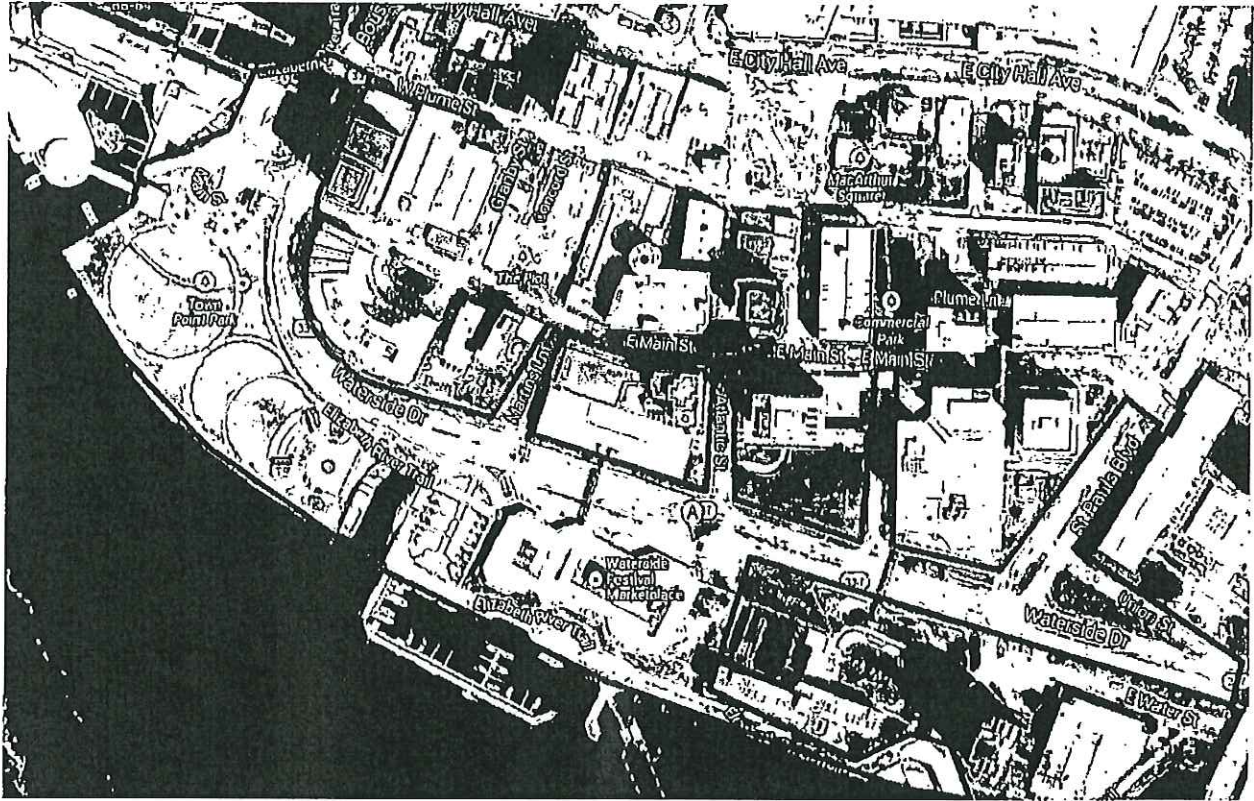


EXHIBIT "W-1"

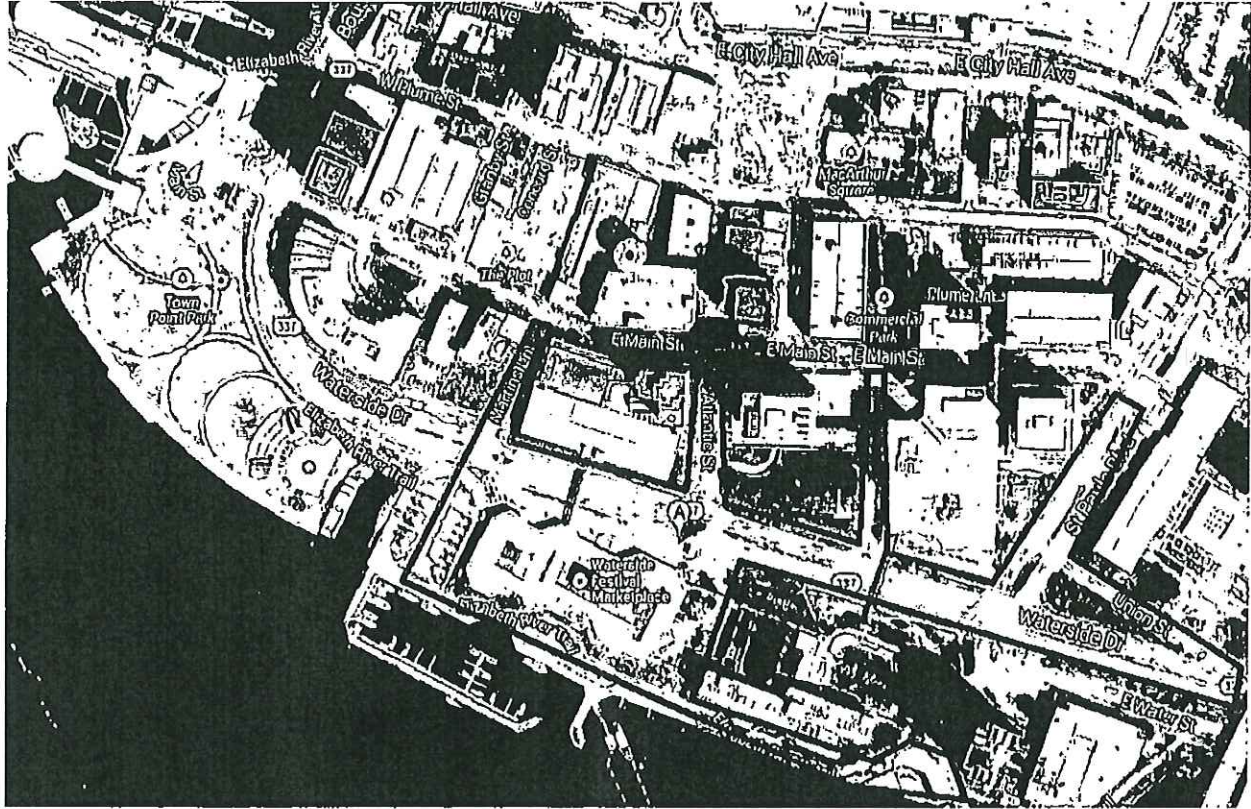
VENDOR PROHIBITED AREA



Vendor prohibited Area Shown Outlined in Red

EXHIBIT "W-2"

SPECIAL EVENTS VENDOR PROHIBITED AREA



Special Events Vendor prohibited Area Shown Outlined in Red

Special Exception

AN ORDINANCE GRANTING A SPECIAL EXCEPTION TO OPERATE AN ENTERTAINMENT ESTABLISHMENT ON PROPERTY LOCATED AT 333 WATERSIDE DRIVE.

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That a Special Exception is hereby granted to Norfolk District Associates, LLC ("NDA"), authorizing the operation of the property located at 333 Waterside Drive as an entertainment establishment. The property which is the subject of this Special Exception is more fully described as follows:

Property fronting 488 feet, more or less, along the southern line of Waterside Drive; premises numbered 333 Waterside Drive and known as "The Waterside" and the adjoining property leased or permitted to be used ("Facility") under the attached Deed of Lease and Development Agreement dated _____ between Waterside Associates Limited Partnership and NDA ("Lease").

Section 2:- That the Special Exception granted hereby shall be subject to the following conditions:

- (a) The sale of alcoholic beverages and the provision of entertainment may only be conducted from 6:00 a.m. until 2:00 a.m. the following morning, seven days per week.
- (b) The occupancy of the Common Areas (as such term is defined in the Lease) or any of the individual tenant spaces within the Facility shall not exceed the maximum number of people indicated on the applicable certificates of occupancy as posted on the wall in each such space, and the use authorized by this Special Exception shall not commence until a certificate of occupancy reflecting the limit in each space has been issued by the Department of Planning.
- (c) The entertainment provided shall not include lewd, obscene, erotic or other forms of dance which violate § 5-27, § 28-11 or § 28-12 of the Norfolk City Code (1979), as amended, concerning public nudity and indecent exposure. Forms of entertainment which do not violate applicable laws or the terms of the Lease, as amended from time to time, are authorized by this Special Exception.
- (d) NDA shall maintain a current, active business license, if required by law,

at all times while in operation.

- (e) NDA shall remain current on all food and beverage taxes and business personal property taxes, if required by law, at all times while in operation.
- (f) This Special Exception may be revoked if all of the licenses to serve alcoholic beverages held by NDA and those held by any parent, subsidiary or affiliate of NDA in connection with the use of the Facility are revoked by a final unappealable decision of the Alcoholic Beverage Control ("ABC") Commission of the Commonwealth of Virginia or any court of competent jurisdiction.
- (g) In-house or licensed security shall be provided at all times when any entertainment event is being held on the property.
- (h) This Special Exception shall apply to the Common Areas of the Facility, plus such other areas as are controlled by NDA or any parent, subsidiary or affiliate of NDA. Moreover, this Special Exception will cover portions of the Facility leased to unrelated third parties, unless and until a separate special exception is issued by City Council to such unrelated third party for the use of such party's individual tenant space.

Section 3:- That the City Council hereby determines that the Special Exception granted herein and the uses authorized hereby in connection with the operation of the Facility as described herein and pursuant to the terms of the Lease comply with each of the requirements of §25-7 of the Zoning Ordinance of the City of Norfolk, 1992 (as amended), namely that:

- (a) The proposed use and development will be in harmony with the objectives and policies of the adopted General Plan of Norfolk and with the general and specific purposes for which this ordinance was enacted and for which the regulation of the district in question were established;
- (b) The proposed use and development will not substantially diminish or impair the value of the property within the neighborhood in which it is located;
- (c) The proposed use and development will not have an adverse effect upon the character of the area or the public health, safety and general welfare. Conditions have been applied to the proposed use and development, as specified in Section 25-8 below, which mitigate potential adverse impacts;
- (d) The proposed use and development will be constructed, arranged and operated so as not to interfere with the use and development of neighboring property in accordance with the applicable district regulations;

- (e) The proposed use and development will be served adequately by essential public facilities and services such as streets, public utilities, drainage structures, police and fire protection, refuse disposal, parks, libraries, and schools;
- (f) The proposed use and development will not cause undue traffic congestion nor draw significant amounts of traffic through residential streets;
- (g) The proposed use and development will not result in the destruction, loss or damage of natural, scenic or historic features of significant importance;
- (h) The proposed use and development will not cause substantial air, water, soil or noise pollution or other types of pollution which cannot be mitigated;
- (i) The proposed use and development will not cause a negative cumulative effect, when its effect is considered in conjunction with the cumulative effect of various special exception uses of all types on the immediate neighborhood and the effect of the proposed type of special exception use on the City as a whole;
- (j) The proposed use and development complies with all additional standards imposed on it by the particular provisions of the ordinance authorizing such use; and
- (k) No application for a special exception shall be recommended or granted until any and all delinquent real estate taxes owed to the City of Norfolk on the subject property have been paid.

Section 4:- That the Special Exception granted hereby replaces the previously granted special exception permitting the operation of an Entertainment Establishment on this property, adopted on August 18, 2009 (Ordinance No. 43,554) and all provisions and conditions previously approved are entirely superseded by the terms of this Special Exception. This Special Exception does not affect any of the other special exceptions previously granted in connection with the use of this property, which were also adopted on August 18, 2009 (Ordinance Nos. 43,553, 43,556 & 43,557).

Section 5:- That the general conditions to be applied to all similar special exceptions pursuant to §25-9 of the Zoning Ordinance of the City of Norfolk, 1992 (as amended), are specifically waived or modified by the approval of this Special Exception with regard to this Facility to the extent the terms and conditions of this Special Exception conflict with any such general conditions.

Section 6:- That this ordinance shall be in effect from the date of its adoption.

_____, 2013

Norfolk District Associates, LLC
601 East Pratt Street, 6th Floor
Baltimore, Maryland 21202

Norfolk Redevelopment and Housing Authority
201 Granby Street,
Norfolk, Virginia 23510

**Re: \$32,000,000 Appropriation to Fund the Redevelopment of The
Waterside Festival Marketplace**

Ladies and Gentlemen:

I am the City Attorney and have acted as counsel to the City of Norfolk, Virginia (the "City") in connection with the Deed of Lease and Development Agreement, including exhibits, dated _____, 2013 ("Agreement") between Norfolk Redevelopment and Housing Authority ("Authority"), as Lessor, and Norfolk District Associates, LLC ("NDA"), as Lessee, which the City has executed for the purpose of acknowledging its rights and obligations, for the redevelopment of property known as The Waterside Festival Marketplace ("Waterside") in the City. The City Council of the City ("City Council") selected The Cordish Companies, a Maryland corporation ("Cordish"), an affiliate of NDA, to redevelop Waterside in accordance with the provisions of the Agreement. The City has agreed to appropriate \$32,000,000 ("City Expenditure") to pay to the Authority to fund a grant to pay the NHRA Allowance (as such term is defined in the Agreement).

Capitalized terms used herein that are not defined herein, but are defined in the Agreement, shall have the meanings ascribed thereto in the Agreement. In my capacity as counsel to the City and for the purposes of this opinion, I have examined the following documents, which shall be collectively referred to herein as the "City Documents": (i) the Agreement; (ii) the Parking Agreement dated _____, 2013; (iii) the Performance Based Grant & Memorandum of Agreement dated _____, 2013; (iv) the Marina Support Space Sublease Agreement dated _____, 2013; and (v) the Guaranty of Completion dated _____, 2013. The opinions set forth herein are subject to the following assumptions:

A. The signatures of all persons (except for those on behalf of the City) are genuine and authentic and none of such persons suffers any legal disability;

B. All documents presented to us as copies conform with the originals thereof; and

C. Each document either referred to in this opinion or examined by us with respect to matters addressed in this opinion has been duly authorized, executed and delivered by, and constitutes a valid, binding and enforceable obligation of, the parties to such document other than the City.

Whenever an opinion herein is qualified by the phrase "to the best of our knowledge" or any similar phrase implying a limitation on the basis of knowledge, it is intended to indicate that the individuals in this office who have been engaged in the representation of the City have no current actual knowledge which would contradict the opinion rendered.

Based upon our review of the City Documents and other documents referred to above, our knowledge of the City and its operations and such other investigation as we have deemed appropriate, we are of the opinion as of this date that:

1. The City is a political subdivision of the Commonwealth of Virginia, validly organized and existing under the Constitution and laws of the Commonwealth of Virginia, and has all requisite legal power and authority (i) to enter into and perform under the City Documents, and (iii) to carry out the transactions required of it by the City Documents.
2. The City's ordinance relating to the City Documents and the transactions contemplated thereby (the "Ordinance"), excluding the ordinances related to the Localized Alternative Sign Overlay District described in Section 10.7(b) and Exhibit I-2 of the Agreement ("Sign Ordinance") and the special exception described in Section 10.2.3 and Exhibit X of the Agreement ("Special Exception Ordinance"), has been duly adopted by the City and has not been repealed, revoked, rescinded, amended or challenged and no further action of the City is required for its continued validity or to authorize the execution and delivery of any of the City Documents and the performance by the City of its obligations and commitments thereunder.
3. The execution, delivery and performance of the City Documents have been duly authorized by all necessary action on the part of the City, in accordance with all applicable laws, including without limitation, the Code of the City of Norfolk, Virginia ("Code of the City"), the Charter of the City of Norfolk, Virginia ("City Charter"), the Code of Virginia of 1950, as amended (the "Code of Virginia"); and the Constitution of the Commonwealth of Virginia ("Constitution of Virginia"). The City Expenditure has been duly appropriated and the disbursement thereof in accordance with the City Documents has been duly authorized by all necessary action on the part of the City in accordance with all applicable laws, including without limitation, the Code of the City, the City Charter, the Code of Virginia and the Constitution of Virginia. No other consent, approval, authorization, or other action by, or

filing or registration with, any federal, state or local authority, agency or other person, is required for the execution and delivery of any of the City Documents and the performance by the City of its obligations and commitments thereunder.

4. The City Documents have been duly executed and delivered by the City.
5. The City Documents constitute legal, valid, binding and enforceable obligations of the City, except that the enforceability thereof may be subject to (i) the exercise of judicial discretion in accordance with general principles of equity, (ii) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other similar laws affecting creditors' rights generally, and (iii) with respect to certain indemnity and contribution provisions (other than the City Expenditure and the obligations of the City to fund the City Expenditure), court decisions invalidating such provisions upon grounds of public policy.
6. The adoption of the Ordinance, the execution and delivery by the City of the City Documents and the compliance by the City with and the performance and observance of the terms and conditions of the City Documents do not and will not (a) conflict with, or result in any violation or breach of any of the provisions of, or constitute a default under, or is prohibited by any Code of the City, the City Charter, the Code of Virginia or the Constitution of Virginia or any constitutional provision, statute, ordinance or governmental rule or regulation or any (x) agreement, indenture, note, mortgage, deed of trust, resolution or other agreement or other instrument to which the City is a party or by which it is bound, or (y) any license, judgment, decree or order applicable to the City, or (b) result in the creation or imposition of any lien, charge, encumbrance or security interest on the property of the City (other than as contemplated by the City Documents).
7. There are no proceedings pending or, to the best of our knowledge, threatened against the City in any court or before any governmental authority or arbitration board or tribunal, that could materially and adversely affect the transactions contemplated by the City Documents or affect the City's ability to perform and observe the terms and conditions of the City Documents, or that, in any way, would adversely affect the validity and enforceability of the City Documents, or any agreement or instrument to which the City is a party and that is contemplated by the foregoing, or to contest the legal existence or powers of the City or the title to any of the offices of any officer of the City.
8. To the best of our knowledge, the City is not in default in any material respect under any agreement or other instrument relating to any general obligation of the City.
9. All actions taken by the City in connection with the Ordinance and the City Documents are legal and valid in all respects and none of the proceedings had, or actions taken, with respect to any of the foregoing have been repealed, revoked, rescinded or challenged and no further action of the City is required for its continued validity

We express no opinion in this opinion as to any matter which may be governed by the law of any jurisdiction other than the Commonwealth of Virginia and the United States of America.

This opinion is for your benefit and the benefit of your successors and assigns and their respective counsel, for the benefit of Cordish and its affiliates, and their respective counsel, and for the benefit of any Leasehold Mortgagee (as such term is defined in the Agreement). We authorize the reliance by the parties listed above on the opinions expressed in this letter regardless of whether such parties are also relying upon the opinions of their counsel. Except as aforesaid, this opinion may not be distributed to or relied upon by any other person or entity quoted in whole or in part or otherwise reproduced in any other document, nor is it to be filed with any governmental agency other than the City except with the prior written consent of this office.

Finally, we do not undertake to advise you of any changes in the opinions expressed herein resulting from matters that might hereafter come or be brought to our attention. Notwithstanding the foregoing, we have agreed to update this opinion letter to include the Sign Ordinance and the Special Exception Ordinance upon the passage of such ordinances.

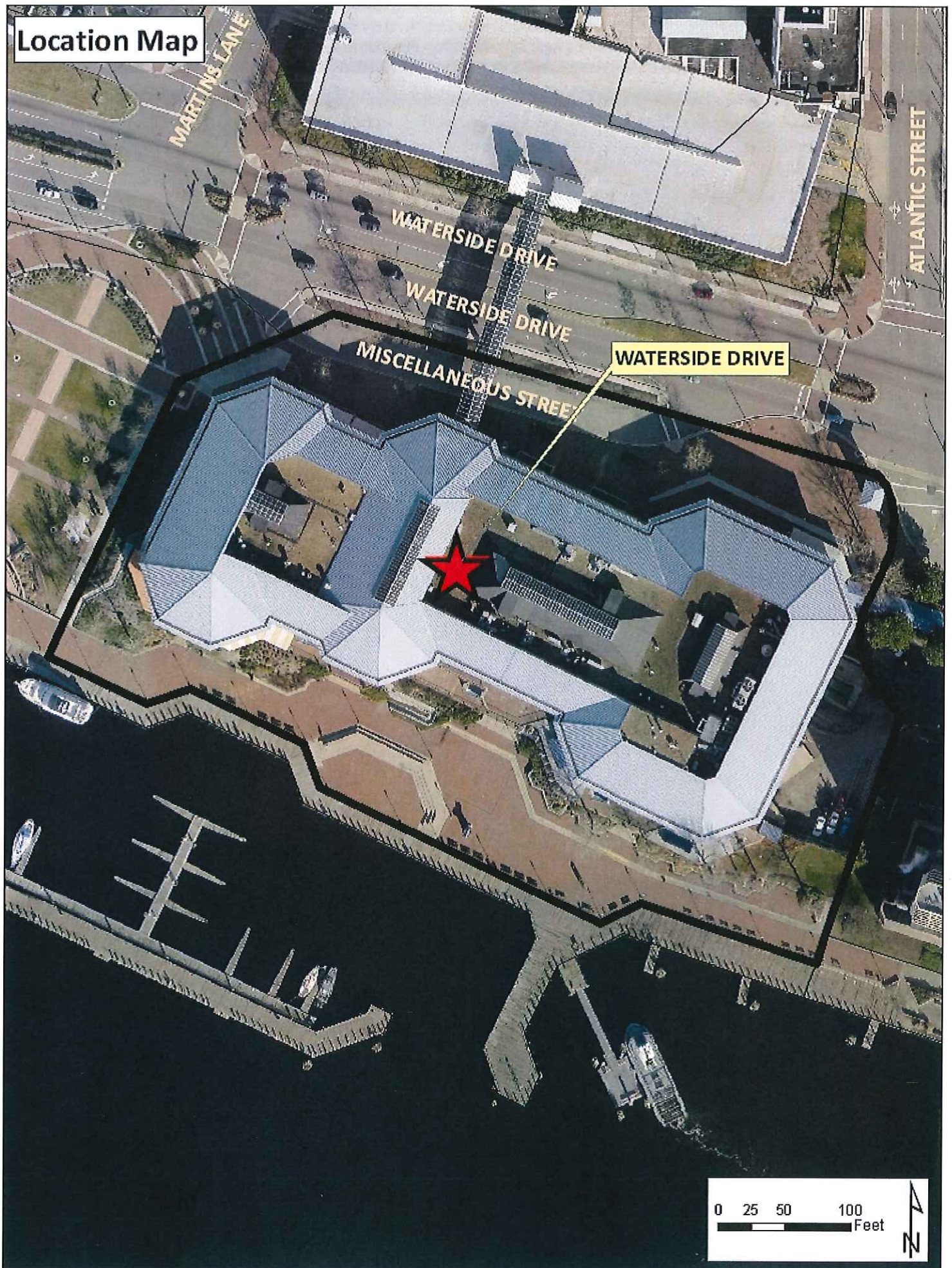
Sincerely yours,

CITY OF NORFOLK

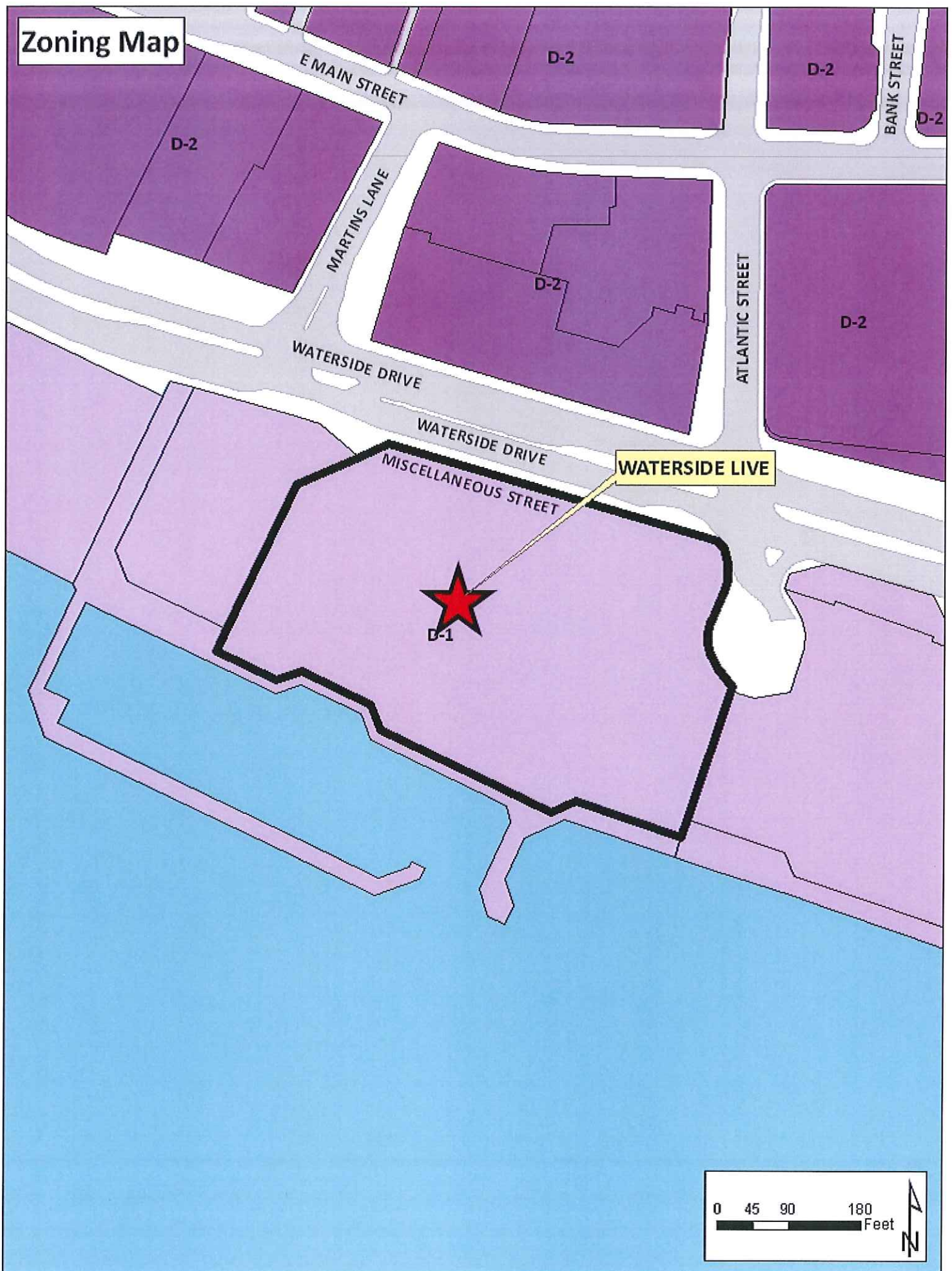
By:

Bernard A. Pishko, Esquire
City Attorney

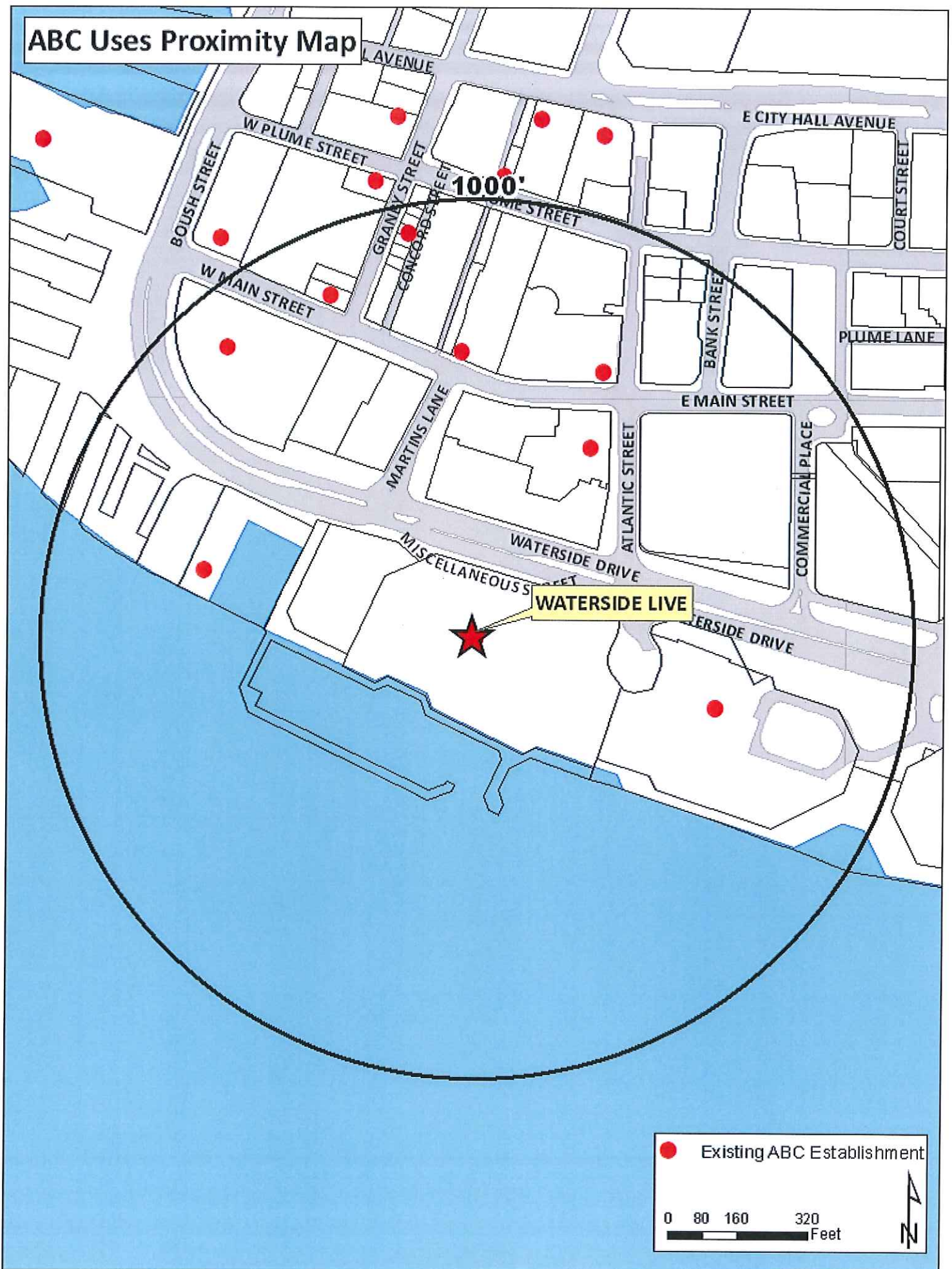
Location Map



Zoning Map



ABC Uses Proximity Map





City of NORFOLK

December 6, 2014

Kevin Murphy
President, Downtown Norfolk Civic League
P.O. Box 3655
Norfolk, VA 23514

Dear Mr. Murphy,

The Planning Department is processing a Special Exception request to operate an Entertainment Establishment with alcoholic beverages on property located at 333 Waterside Drive. This item is tentatively scheduled for the January 23, 2014 City Planning Commission public hearing.

Summary

This request would allow *Waterside Live!* to offer entertainment and alcoholic beverages to their customers.

	Proposed
Hours of Operation and Hours for the Sale of Alcohol	6:00 a.m. until 2:00 a.m., seven days a week

If you would like additional information on the request, you may contact Matthew Simons at (757) 664-4750. A copy of the complete application is enclosed.

Sincerely,

George M. Homewood, AICP, CFM
Acting Planning Director

cc: Vanessa Seals, Senior Neighborhood Development Specialist
Vanessa.Seals@Norfolk.gov or (757) 823-4357



City of NORFOLK

December 6, 2014

Mary Miller
President, Downtown Norfolk Council
201 Granby Street, Suite 101
Norfolk, VA 23510

Dear Ms. Miller,

The Planning Department is processing a Special Exception request to operate an Entertainment Establishment with alcoholic beverages on property located at 333 Waterside Drive. This item is tentatively scheduled for the January 23, 2014 City Planning Commission public hearing.

Summary

This request would allow *Waterside Live!* to offer entertainment and alcoholic beverages to their customers.

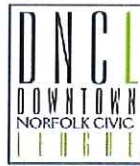
	Proposed
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If you would like additional information on the request, you may contact Matthew Simons at (757) 664-4750. A copy of the complete application is enclosed.

Sincerely,

George M. Homewood, AICP, CFM
Acting Planning Director

cc: Vanessa Seals, Senior Neighborhood Development Specialist
Vanessa.Seals@Norfolk.gov or (757) 823-4357



January 21, 2014

Matthew Simons
City of Norfolk
Planning & Community Development
508 City Hall Building
Norfolk, VA 23510

Dear Mr. Simons:

I am writing on the behalf of the Downtown Norfolk Civic League to notify your office and Planning Commission that we voted unanimously to oppose the Special Exception request to allow *Waterside Live!* to operate an Entertainment Establishment with alcoholic beverages.

Rather than granting a single Special Exception for the entire facility, it is the DNCL's position that each of the individual establishments should apply for their own Special Exceptions. Otherwise, the City would be granting a single Special Exception without knowing the particulars of individual establishments – hours, theme, capacity, etc. Further, a single Special Exception would limit the City's options in dealing with individual establishments that violate the Special Exception.

The DNCL also recommends shortening the Special Exception process to 30 days – not for the purpose of approving the request by *Waterside Live!*, but to expedite the process for other Norfolk businesses that would otherwise be fully operational. The approximately 120 days that it currently takes to get a Special Exception is a deterrent to doing business in Norfolk that negatively impacts tenants and landlords alike.

Please let me know if you have any questions regarding the DNCL's position on the *Waterside Live!* request.

Sincerely,

Kevin R. Murphy
President